(18,625.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 101.

DANIEL CRONIN, PLAINTIFF IN ERROR,

vs.

THE CITY OF DENVER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Colorado, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Daniel Cronin, plaintiff in error, and The City of Denver, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great
2 damage of the said Daniel Cronin, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty fourth day of June, in the year of our Lord one thousand nine hundred and two.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY,
Clerk U. S. Circuit Court, District of Colorado,
By CHARLES W. BISHOP,
Deputy Clerk.

Allowed by—
WILLIAM H. GABBERT,
Presiding Justice of the Supreme Court of the State of Colorado.

3 [Endorsed:] 4389. Writ of error.
1—101

4 *Return on Writ of Error.*

UNITED STATES OF AMERICA,
District of Colorado, State of Colorado, } ss:

In obedience to the command of the above and foregoing writ, I herewith transmit to the honorable the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the above entitled cause, together with all things concerning the same.

Witness my hand and the seal of the supreme court of the State of Colorado, at Denver, in said State, this 22nd day of July, A. D. 1902.

[Seal Supreme Court, State of Colorado.]

HORACE G. CLARK,
Clerk of the Supreme Court of the State of Colorado,
By JOHN B. COOKE,
Deputy Clerk.

5 UNITED STATES OF AMERICA,
State of Colorado. }

To the Honorable John Campbell, chief justice of the supreme court of the State of Colorado:

The petition of Daniel Cronin respectfully shows, that on the second day of June, A. D., 1902, the supreme court of the State of Colorado rendered a final judgment against your petitioner in a certain cause wherein Daniel Cronin was plaintiff in error and The City of Denver defendant in error, affirming a certain judgment rendered in the county court of Arapahoe county, Colorado, against your petitioner as defendant, in a suit wherein The City of Denver was plaintiff, for the sum of one hundred dollars ($100.00) and costs; and said supreme court also rendered judgment against your petitioner in said cause for costs and awarding execution thereon, as will appear by reference to the record and proceedings in said cause, and that said court is the highest court in said State in which a decision in said cause could be had; and your petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error under section 709 of the Revised Statutes of the United States, because there was drawn in question in said suit the validity of a statute of and an authority exercised under the State of Colorado on the ground of their being repugnant to the Constitution of the United States, and the decision of said supreme court was in favor of their validity, and because in said suit your petitioner claimed a right, privilege and immunity under the Constitution of the United States, and the decision of said supreme court was against the right, privilege

or immunity claimed by your petitioner in this, that in said
6 cause your petitioner was prosecuted for an alleged violation of certain sections of the ordinances of the city of Denver enacted under the authority granted by the legislature of the State of Colorado, which sections of said ordinances read as follows:

SECTION 745. Each and every liquor saloon, dram shop or tippling house keeper, licensed under the provisions of this article, who shall, by himself or his agent, clerk or servant, permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without door or doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon, dram shop or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided.

SECTION 746. No person, whether as principal, clerk, agent or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith in any manner whatsoever, either by doors or otherwise, shall suffer or permit any female person to be or remain in such liquor saloon, dram shop, tippling house or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house or liquor saloon, or in any place adjacent thereto or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait or attend on any person, or solicit drinks in any such place.

That upon the trial of said cause and upon the hearing of said cause in said supreme court this petitioner claimed and asserted that the said ordinances and statutes of the State of Colorado authorizing the same were repugnant to that portion of the fourteenth amendment to the Constitution of the United States which reads as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

7 That the said supreme court in its judgment and decision held that the said sections of said ordinances of the city of Denver were not in conflict with or repugnant to said portion of the fourteenth amendment to the Constitution of the United States, and

that the judgment rendered against your petitioner for an alleged violation of said sections in permitting women to remain in the saloon and wine rooms of your petitioner was valid, and that said judgment did not abridge the privileges and immunities of your petitioner and did not deprive him of his property or deny to him the equal protection of the laws, as appears by the records of the proceedings in said cause, which is herewith submitted.

Wherefore, your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States and for a citation and supersedeas, and your petitioner will ever pray, etc.

DANIEL CRONIN, *Petitioner.*
MILTON SMITH,
Attorney for Petitioner.

8 It is hereby ordered that a writ of error issue as prayed for in the foregoing petition, except that supersedeas is not granted, and the undersigned, presiding justice of the supreme court of the State of Colorado, the chief justice of said court being absent from said State, does hereby certify that upon the hearing of said cause in said supreme court of the State of Colorado the validity of certain sections of the ordinances of the city of Denver and of the statutes of the State of Colorado authorizing such ordinances was drawn in question on the ground of their being repugnant to the Constitution of the United States, and that the decision of said supreme court was in favor of their validity.

Witness my hand this 24th day of June, A. D., 1902.

WILLIAM H. GABBERT,
Presiding Justice of the Supreme Court of the State of Colorado.

9 [Endorsed:] No. 4389 In the supreme court of the State of Colorado Daniel Cronin plaintiff in error *vs.* The City of Denver defendant in error. Petition for writ of error 7–12–'02 Ought to be completed by Wed. or Thurs. next Milton Smith, attorney for petitioner.

10 In the Supreme Court of the United States.

DANIEL CRONIN, Plaintiff in Error, *vs.* FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. GRIFFITH, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Defendants in Error.	Error to the Supreme Court of the State of Colorado.

Assignment of Errors.

Comes now the said Daniel Cronin, plaintiff in error, by Milton Smith, his attorney and says that the supreme court of the State of

Colorado, in case numbered 4392 wherein Frank Adams, John T. Bottom and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, were appellants, and Daniel Cronin was appellee, should be reversed and that a judgment should be entered affirming the judgment entered in the district court of Arapahoe county, Colorado, and that in the record and proceedings aforesaid there is manifest error in the following particulars, to-wit:

First. The court erred in reversing the judgment of the district court of Arapahoe county, Colorado.

Second. The court erred in deciding that sections 745 and 746 of the compiled ordinances of the city of Denver are valid and not in conflict with the provisions of the constitution of the State of
11 Colorado and of the United States.

Third. That the decision of said supreme court of the State of Colorado that said sections 745 and 746 of the compiled ordinances of the city of Denver are valid, is erroneous, because such decision is based upon the finding and decision of said supreme court of the State of Colorado that said sections are restrictions upon saloon keepers only, which could properly be made and enforced against saloon keepers, and that such restrictions do not constitute a violation of the rights of women under the Constitution of the United States.

Fourth. That the decision of said supreme court of the State of Colorado that said sections 745 and 746 of the compiled ordinances of the city of Denver, are valid, is erroneous, because such decision is based upon the finding and decision of said supreme court of the State of Colorado that such ordinance was enacted in aid of public morality, notwithstanding there is nothing in the record in this case showing that such was the purpose of such ordinance, or that the enforcement of such sections of said ordinance would in any way aid or affect public morality.

Fifth. That said court erred in failing and refusing to affirm the judgment of the district court of Arapahoe county, Colorado.

Wherefore, this petitioner prays that the judgment aforesaid may be reversed, annulled and altogether holden for naught, and that said judgment of the district court of Arapahoe county, Colorado, be affirmed.

MILTON SMITH,
Attorney for Plaintiff in Error.

6/26/2/3

12 [Endorsed:] No. —. In the Supreme Court of the United States Daniel Cronin plaintiff in error, *vs.* Frank Adams *et al.* defendants in error. Assignment of errors. Milton Smith, attorney for pl'ff in error.

13 UNITED STATES OF AMERICA, ss:

To the City of Denver, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington within thirty (30) days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Colorado, wherein Daniel Cronin is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John Campbell, chief justice of the supreme court of the State of Colorado, this twenty-seventh day of June, in the year of our Lord one thousand nine hundred and two.

JOHN CAMPBELL,
Chief Justice of Supreme Court, State of Colorado.

14 A copy of the foregoing citation was delivered to me on the 27th day of June, A. D., 1902, and I hereby accept service thereof on behalf of the said The City of Denver, defendant in error.

H. M. ORAHOOD,
Attorney for Defendant in Error.

15 [Endorsed:] 4389. Citation.

16 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error. } No. 4389. Certificate.

To the honorable the Supreme Court of the United States, and to the honorable the Chief Justice and Associate Justices thereof, Greeting:

This is to certify that, in the above entitled cause, judgment was rendered against the above named plaintiff in error on the fifth day of May, A. D., 1902, and thereafter on the second day of June, A. D., 1902, his petition for a rehearing theretofore filed within the time required by the court was denied, and in the hearing and determination of said cause there was drawn in question the validity of a statute of and an authority exercised under the State of Colorado, on the ground of their being repugnant to the Constitution of the United States, and that said decision was against the plaintiff in error and sustained the validity of said statute and authority, and that in said cause said plaintiff in error claimed a right, privilege and immunity

under the Constitution of the United States, and the decision of said court was against the right, privilege and immunity claimed by said plaintiff in error, in this, that in said cause said plaintiff in error was prosecuted for an alleged violation of sections 745 and 746 of the ordinances of the city of Denver enacted under the authority granted by the legislature of the State of Colorado, and that
17 said plaintiff in error claimed and asserted that said ordinances and statutes of the State of Colorado authorizing the same were repugnant to the fourteenth amendment to the Constitution of the United States, and that said court in its judgment and decision held that the said sections of said ordinances of the city of Denver were not in conflict with or repugnant to said fourteenth amendment to the Constitution of the United States, and that the judgment of the county court of Arapahoe county, Colorado, entered in said cause was valid and did not abridge the privileges and immunities of said plaintiff in error, and did not deprive him of his property or deny to him the equal protection of the laws.

Witness, the Honorable John Campbell chief justice of the supreme court of the State of Colorado, on June 27th in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth, at Denver, in the State of Colorado.

JOHN CAMPBELL,
Chief Justice of the Supreme Court of the State of Colorado.

18 [Endorsed:] 4392 No. —. In the supreme court of the States of Colorado Daniel Cronin plaintiff in error *vs.* The City of Denver defendant in error Certificate by presiding judge Milton Smith, attorney for pl'ff in error

19 *Bond.*

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

Know all men by these presents, that we, Daniel Cronin, as principal, and John D. Hanigan and C. A. Lammers, all of the State of Colorado, as sureties, are held and firmly bound unto The City of Denver in said State, in the full and just sum of one thousand dollars ($1000.00), to which payment well and truly to be made, we bind ourselves, our executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 27th day of June in the year of our Lord one thousand nine hundred and two.

Whereas, lately, at the April term, A. D., 1902, of the supreme court of the State of Colorado, sitting at Denver, in a certain action pending in said court between Daniel Cronin, plaintiff in error, and The City of Denver, defendant in error, judgment was rendered against the said Daniel Cronin, and the said Daniel Cronin having

prayed and been allowed a writ of error to the supreme court of the State of Colorado, to reverse the judgment of the said supreme court of the State of Colorado, and a citation directed to the said The City of Denver, citing and admonishing it to be and appear in the Supreme Court of the United States, at Washington, D. C., thirty days from and after the date of the said citation:

Now, the condition of the above obligation is such, that if the said Daniel Cronin shall prosecute the said writ of error to effect, and answer all damages and costs, if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

DANIEL CRONIN. [SEAL.]
JOHN D. HANIGAN. [SEAL.]
20 C. A. LAMMERS. [SEAL.]

Sealed and delivered in the presence of
LINCOLN B. LIVINGSTON.
WILLIAM A. HARKINS.

Approved:
JOHN CAMPBELL,
Chief Justice of the Supreme Court of the State of Colorado.

STATE OF COLORADO, } ss:
County of Arapahoe, }

J. D. Hanigan and C. A. Lammers, the sureties, whose names are subscribed to the above undertaking, being severally and duly sworn, each for himself says: That he is a resident within the said Arapahoe county, and that he is worth the sum specified in the said undertaking; one thousand dollars, over and above his just debts and liabilities in property not exempt from execution in this State, particularly, to-wit: as to the said J. D. Hanigan lots 29 & 30 block 90 Stiles' addition, No. 2349-'51 Curtis St., as to said C. A. Lammers lots 37, 38 & N. 6 ft. lot 36 block 5 Pohlfing's subdivision, all in the city of Denver, Arapahoe county.

JOHN D. HANIGAN.
C. A. LAMMERS.

Subscribed and sworn to before me this 27th day of June, A. D. 1902.

My commission expires July 24th 1903

[Seal of Lincoln B. Livingston, Notary Public, Arapahoe County, Colo.]

LINCOLN B. LIVINGSTON,
Notary Public.

21 [Endorsed:] 4392 No. — In the Supreme Court of the United States. Daniel Cronin, plaintiff in error, *vs.* The City of Denver defendant in error Bond Milton Smith, attorney for pl'ff in error

22 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error.

To the clerk of the supreme court of the State of Colorado:

In making up the transcript for the Supreme Court of the United States in the above entitled cause you will please make a complete copy of the transcript of record & bill of exceptions (and assignment of errors) filed in said court from the county court of Arapahoe county, together with copies of all orders entered in said supreme court, copy petition for rehearing, copy of the opinion of the court and the final judgment entered. You will also transmit with said certified transcript copies of the printed and typewritten briefs filed by each of the parties to said cause in said supreme court duly certified.

MILTON SMITH,
Attorney for Plaintiff in Error.

7/14/2/2

23 [Endorsed:] No. 4389. In the supreme court of the State of Colorado. Daniel Cronin, plaintiff in error *vs.* City of Denver, defendant in error. Milton Smith, attorney for plaintiff in error.

24 In the Supreme Court of the State of Colorado.

Pleas before the honorable the supreme court of the State of Colorado, sitting at Denver, in said State, at a term thereof begun and held at the capitol building in said city on the second Monday of April, A. D. 1901, and of the Independence of the United States the one hundred and twenty-fifth.

Present: Hon. William H. Gabbert, Hon. Robert W. Steele, justices. Charles C. Post, Esq., attorney general, Felix A. Richardson, Esq., bailiff, and Horace G. Clark, Esq., clerk.

25 *Be it remembered* that heretofore, and on to-wit, the 19th day of August, 1901, there *was* filed in the office of said clerk the following transcript of record, bill of exceptions and assignment of errors, which are in words and figures as follows, to-wit:

UNITED STATES OF AMERICA, }
State of Colorado, County of Arapahoe, } *ss:*

In the County Court, May Term, A. D. 1901.

Pleas before the Honorable Ben B. Lindsay, judge of the county court within and for the county of Arapahoe, State aforesaid, and at a term thereof begun and held at the court house in the city of Denver, in said county, on the first Monday (being the sixth day) of May, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-fifth.

Present: Honorable Ben B. Lindsey, judge. Robert J. Jones, sheriff.
Attest, THOMAS L. BONFILS, *Clerk.*

26 Be it remembered that upon to-wit, the 1st day of June, A. D. 1901, the same being one of the regular days of the May term A. D. 1901 of said court, the following transcript and papers from the police court of the city of Denver, county of Arapahoe and State of Colorado, were filed in this court to-wit:—

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

In the Police Magistrate Court.

CITY OF DENVER, Plaintiff, }
vs.
DAN CRONAN, Defendant. }

Said defendant to the city of Denver, Dr.

To five hundred dollars for a violation of an ordinance entitled "Ordinance No. 101 of the series of 1898," a bill for an ordinance revising, compiling and consolidating all ordinances of a general nature of the city of Denver, chapter 8 article 15, section 746, passed and approved the 24th day of October, A. D. 1898, of the laws and ordinances of the city of Denver; and known as, the "Compiled Ordinances and Charter," in this to-wit:

That said Dan Cronan did violate said section of said chapter and article of said ordinance in the city of Denver, county of Arapahoe and State of Colorado; on or about, to-wit, the 22nd day of
27 May, 1901, against the form of the ordinance in such case provided by the city of Denver.

FRANK J. KRATKE.

(Endorsed:) N. G. $50. No. 28524.—In police magistrate court Complaint for violating ord.—Wine room.—The City of Denver *vs.*

Dan Cronin.—State of Colorado, city of Denver, *ss.*—Kratke being duly sworn, on his oath says that the within complaint is true as he verily believes. Frank J. Kratke.—Subscribed and sworn to before me this 23rd day of May, A. D. 1901.—R. J. Byrne, clerk of police magistrate court.—Filed in my office this 23 day of May, A. D. 1901.—R. J. Byrne clerk of police magistrate court.

Appeal Bond.

Know all men by these presents, that we, Dan Cronin as principal, and Eugene McCarthy as surety, are held and firmly bound unto the City of Denver, in the penal sum of $100.00 (one hundred dollars), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals, this 31st day of May, A. D. 1901.

The condition of the above obligation is such that whereas, the said City of Denver did, on the 23rd day of May, A. D. 1901, before Wm. J. Thomas, police magistrate of the city of Denver, in the county of Arapahoe, recover a judgment against the said
28 bounden Cronan for the sum of fifty dollars and costs, from which judgment the said Cronin has taken an appeal to the county court of Arapahoe county, in the State of Colorado.

Now if the said Cronin shall duly prosecute his said appeal and shall pay off and satisfy any judgment that may be rendered upon the trial of said cause in the court to which the appeal is taken, or shall surrender himself in satisfaction of said judgment, then this obligation to be void; otherwise to remain in full force and effect.

DANIEL CRONIN, *Principal.* [SEAL.]
EUGENE McCARTHY, *Surety.* [SEAL.]

Approved by me at my office this 31st day of May, 1901.

WM. J. THOMAS,
Police Magistrate.

Justification of Surety.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

Eugene McCarthy whose name is subscribed to the foregoing obligation as surety, being duly sworn says: That he is worth the sum of 100 dollars over and above all his just debts and liabilities. That he is the owner and possessed of clear unencumbered real estate, the title of which is of record in his own name, and which is not by law exempt from levy and sale under execution, of the reasonable cash value 100 dollars, said real estate being situate in the State of Colorado and county of Arapahoe, and described as follows: ¼ block 7 Addition Ramona.

EUGENE McCARTHY.

29 Subscribed and sworn to before me this 31st day of May, A. D. 1901.

R. J. BYRNE,
Clerk of the Police Magistrate Court of the City of Denver.

(Endorsed:) 30373.—Appeal bond.—City of Denver, *versus* Dan Cronin.—Filed this 31st day of May, A. D. 1901, R. J. Byrne, clerk.

STATE OF COLORADO, *Arapahoe County, City of Denver,* } *ss:*

In the Police Magistrate Court.

THE CITY OF DENVER *vs.* DAN CRONIN. } *ss:*

Transcript.

Complaint filed by F. J. Kratke,
Summons issued returnable — ——.
Summons returned served on defendant — ——.
Affidavit filed by —— ——.
Warrant issued and delivered to officer —— ——.
Defendant arrested by Officer Kratke — ——.

30 Defendant appears, is arraigned and pleads not guilty. Witnesses were sworn and testified, and upon hearing the evidence and considering the same, the court doth find the defendant guilty as charged in the complaint. Wherefore, it was by the court here ordered and adjudged that for said offense, the said defendant be fined in the sum of fifty dollars and $2 costs and in default of the payment of the same that the said defendant be imprisoned in the city jail of the city of Denver, until said fine is fully satisfied, not to exceed 26 days.

Appeal prayed May 31, 1901.

Appeal bond filed in the sum of $100 and approved.

STATE OF COLORADO, *City of Denver,* } *ss:*

In the Police Magistrate Court of the City of Denver.

I, Robert J. Byrne, clerk of the police magistrate court of the city of Denver, do hereby certify that the foregoing is a full, true and correct transcript of the records of the said court in a cause heretofore depending, wherein The City of Denver was plaintiff and Dan

Cronin was defendant, and that the accompanying papers marked "1" to "2" inclusive, were all the original papers filed in said court in said cause, and that no other proceedings were had therein.

Witness my hand and seal of said court, this 31st day of
31 May, A. D. 1901.

[SEAL.] R. J. BYRNE,
Clerk of the Police Magistrate Court of the City of Denver.

(Endorsed:) 28524—In the police magistrate court—The City of Denver *vs.* Dan Cronin,—Transcript—

And afterwards upon to-wit, the 17th day of July, A. D. 1901, the same being one of the regular days of the July term A. D. 1901 of said court, the following notice was filed in said court, to-wit:

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

In the County Court.

CITY OF DENVER, Plaintiff, }
vs. } 30373.
DANIEL CRONIN, Defendant. }

To H. M. Orahood, Esq., attorney for plaintiff:

You will please take notice that at the incoming of court on Wednesday, the 17th day of July, 1901, or as soon thereafter
32 as counsel can be heard, we shall apply to the court to have the above entitled cause set for trial on the merits, when and where you may attend if you think proper.

Very respectfully,
T. J. O'DONNELL &
MILTON SMITH,
Attorneys for Defendant.

Received a copy of the within at the city of Denver, Arapahoe county, Colorado, this 15th day of July, 1901, at the hour of 5 p. m.
H. M. ORAHOOD,
R.,
Attorneys for Plaintiff.

(Endorsed:) 30373—In the county court of Arapahoe county, Colorado—City of Denver, *vs.* Daniel Cronin—Notice of intention to apply to have cause set for— Filed in the county court, Arapahoe Co., Colo., Jul- 17, 1901, Thomas L. Bonfils, clerk—T. J. O'Donnell & Milton Smith,—822-826 Ernest & Cranmer building, attorneys for defendant.—

And thereupon the following order was had and entered of record in said court, to wit:—

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

Now on this day on motion of said defendant, by Messrs.
33 T. J. O'Donnell and Milton Smith, his attorneys, this cause is set for trial for Friday, July 19th A. D. 1901, at 9½ o'clock a. m.

And afterwards upon to-wit, the 19th day of July, A. D. 1901, the following order was had and entered of record in said court, to-wit:—

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

Now on this day by agreement, H. M. Orahood, Esq., city attorney appearing for said plaintiff, Messrs. T. J. O'Donnell and Milton Smith, appearing for said defendant, this cause is continued for trial to Monday, July 22nd, A. D. 1901, at 9½ o'clock a. m.

And afterwards upon to-wit, the 23rd day of July, A. D. 1901, the following order was had and entered of record in said court, to-wit:

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

Now on this day this cause having been reached for trial, and no one appearing, it is ordered by the court that this cause
34 be and it is hereby stricken from the trial calendar.

And afterwards upon to-wit the 25th day of July, A. D. 1901, the following orders were had and entered of record in said court, to-wit:—

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

Now on this day by agreement H. M. Orahood, Esq., city attorney, appearing for said plaintiff, Messrs. T. J. O'Donnell and Milton Smith appearing for said defendant, this cause is set for trial this day.

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

Now on this day comes said plaintiff by H. M. Orahood, Esq. city attorney, and said defendant by Messrs. T. J. O'Donnell and

Milton Smith his attorneys also comes, and thereupon comes the trial upon the issues herein joined, a jury being waived, and thereupon comes the evidence, at the conclusion of which defendant moves to dismiss said cause, it is argued by counsel, at the conclusion of which, and the court not being sufficiently advised in
35 the premises judgment is reserved as to said cause and motion to dismiss until another day.

And afterwards upon to-wit the 27th day of July, A. D. 1901, the following orders were had and entered of record in said court, to-wit;

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

In this action the court having heretofore heard the argument of counsel on the motion of said defendant to dismiss said cause and having taken the same under advisement, and the court being now fully advised in the premises, it is ordered that said motion be and it is hereby overruled.

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

In this action the court having heretofore heard the evidence and the argument of counsel in the trial upon the issues herein joined, and having taken the same under advisement, and the court being now fully advised in the premises doth find said defendant guilty. And thereupon it is ordered that judgment be entered herein, that said defendant be fined in the sum of one hundred dol-
36 lars and costs. And let the same be recorded in the judgment book.

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

The court having this day ordered that judgment be entered herein in accordance with the finding of the court, now therefore, It is considered by the court that said plaintiff, City of Denver, have and recover of and from said defendant, Dan Cronin, the sum of one hundred (100) dollars as a fine, together with its costs incurred herein, to be taxed, and that execution issue therefor.

CITY OF DENVER
vs.
DAN CRONIN. } 30373. Appeal.

Now on this day comes said defendant by Messrs. T. J. O'Donnell and Milton Smith, his attorneys, and excepts to the overruling of

his motion to dismiss and to the judgment rendered herein, and he is allowed thirty days in which to prepare and tender a bill of exceptions herein, which, when signed and sealed shall be filed as of this day.

37 And afterwards, upon to-wit, the 7th day of August, A. D. 1901, the following præcipe for transcript was filed in said court to-wit:

"Dictated by Mr. Smith.

DENVER, COLORADO, *August* 7, 1901.

Thomas L. Bonfils, Esq., clerk county court, court house, city.

DEAR SIR: Herewith I hand you bill of exceptions in the case of The City of Denver *vs.* Cronin. I want it filed and I wish you would make up the record in this case immediately. The record will consist of the complaint, all papers sent up from police court, all orders entered, and the judgment. It is a very short record and I want to have it ready if I can by day after tomorrow.

Thanking you in advance, I am,

Yours truly, MILTON SMITH."

H. incl.

(Endorsed:) 30373—Præcipe—Filed in the county court, Arapahoe Co., Colo.—Aug. 7, 1901—Thomas L. Bonfils, clerk.

"Compared by B. & V."

38 STATE OF COLORADO, } *ss:*
County of Arapahoe, }

In the County Court.

CITY OF DENVER, Plaintiff, } No. 30373. Defendant's Bill of Exceptions.
vs.
DANIEL CRONIN, Defendant. }

Be it remembered, that at the trial of this cause, upon to-wit, the 25th day of July, A. D. 1901, the same being one of the regular juridical days of the July, A. D. 1901 term of said court, before the Honorable Ben B. Lindsey, judge of said court, without a jury, the plaintiff appearing by H. M. Orahood, Esq., city attorney, and N. B. Bachtell, Esq., deputy city attorney, its attorneys, and the defendant appearing by Messrs. O'Donnell and Smith, his attorneys, the parties hereto, to maintain the issues herein on behalf of each, offered and gave in evidence as follows, that is to say:

39 MR. BACHTELL: If the court please, we have agreed to submit this case on an agreed statement of facts, which I will proceed to read, and which is as follows:

STATE OF COLORADO, }
County of Arapahoe, } ss:

In the County Court.

CITY OF DENVER, Plaintiff, }
vs. } Statement of Facts.
DANIEL CRONIN, Defendant. }

The plaintiff, The City of Denver, and the defendant, Daniel Cronin, by their respective attorneys, Messrs. H. M. Orahood and N. B. Bachtell for the plaintiff, and T. J. O'Donnell and Milton Smith for the defendant, submit the following agreed statement of facts and agree that the same stand as a statement of facts necessary and incident to the final settlement and determination of the issue joined in the above entitled cause.

1. That the city of Denver is a municipal corporation operating under a special charter granted by the legislature of the State of Colorado.

2. That Frank Adams is fire commissioner of the city of Denver; that John T. Bottom is police commissioner of the city of Denver; and that William H. Griffith was excise commissioner of
40 the city of Denver, at all times hereinafter mentioned, and that the three constituted the fire & police board of the city of Denver.

3. That under and by virtue of said charter provisions the fire & police board have control of the granting of licenses for the carrying on of dram shops, saloons and tippling houses within the limits of said city of Denver under the regulations and provisions of the charter and ordinances of said city, and have power to make arrests for violations of the provisions of the ordinances of the city of Denver in that behalf made and passed.

4. That the said defendant has fitted up at the corner of Eighteenth and Champa streets in said city of Denver and at a number known as 1761 Champa street, a saloon, and has been at said place for more than nine years last past carrying on said business under a license from the said city of Denver, covering all the premises above mentioned and all parts thereof hereinafter described.

5. That said premises are so arranged that in passing from the main bar room one enters a hallway on one side of which are two smaller rooms and on the other side of said hallway is one room, which last mentioned room is used partly for a storage room and partly as a place for serving beverages and drinks; that the other two rooms above mentioned are used for the purpose of serving drinks in to costomers and patrons of the said defendant's place. That in the rear of said rooms is another hallway which leads out onto Eighteenth street in the said city of Denver. That all of said premises so described are included in one large room, but
41 which room is partitioned off and divided by partitions extending toward but not reaching the ceiling. That in the conduct

and management of said business it has been the custom and habit of the said defendant to serve beer, whiskey and other drinks to women the same as to men, and in so doing the said smaller rooms hereinbefore described have frequently been used for said purpose.

6. That article 15 of ordinance No. 101 of the series of 1898 is entitled, "Liquor saloons, dram shops, and tippling houses," and contains among other provisions sections reading as follows:

SEC. 745. Each and every liquor saloon, dram shop or tippling house keeper, licenses under the provisions of this article, who shall by himself or his agent, clerk or servant, permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon dram shop, or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided.

SEC. 746. No person, whether as principal clerk, agent, or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith in any manner whatsoever, either by doors or otherwise, shall suffer or permit any female person to be or remain in such liquor saloon, dram-shop, tippling house or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house or liquor saloon, or in any place adjacent thereto or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait and attend on any person, or solicit drinks in any such place.

42 7. That such ordinance No. 101 of the series of 1898 has been published under the authority of the city council of the city of Denver in a book entitled, "Compiled Ordinances and Charter, the City of Denver, compiled by Henry J. Hersey, of the Denver bar," and printed in the year 1898 by the Smith-Brooks Printing Company, Denver, Colorado.

8. That on to-wit, the 22nd day of May, A. D. 1901, at about the hour of 9 o'clock in the afternoon, certain women, viz., Mary Doe and Alice Roe were upon the above premises of the said defendant for the purpose of there being served with intoxicating liquor, and were served with intoxicating liquor, by said defendant in one of the rooms above mentioned, and said liquor was then drank upon

said premises and paid for, being the violation charged in complaint hereinafter set out.

9. That the said women were not intoxicated on said premises and that there were no disorderly persons upon said premises at said time.

10. That on, to-wit, the 22nd day of May, A. D. 1901, the said Hamilton Armstrong, chief of police of the city of Denver, acting under the directions of the said fire & police board of the city of Denver, caused this defendant to be arrested, charged with the violation of said sections 745 and 746 of said ordinance No. 101, of the series of 1898, by written complaint, of which complaint the following is a copy:

43 STATE OF COLORADO, } ss.
County of Arapahoe, }

In the Police Magistrate Court.

CITY OF DENVER, Plaintiff, }
vs. }
DAN CRONIN, Defendant. }

Said defendant to the city of Denver, Dr.

To five hundred dollars for a violation of an ordinance entitled "Ordinance No. 101 of the series of 1898," a bill for an ordinance revising, compiling and consolidating all ordinances of a general nature of the city of Denver, chapter 8, article 15, section 746, passed and approved the 24th day of October, A. D. 1898, of the laws and ordinances of the city of Denver, and known as the "Compiled Ordinances and Charter," in this, to-wit, that said Dan Cronin did violate said section of said chapter and article of said ordinances in the city of Denver, county of Arapahoe, and State of Colorado, on or about, to-wit, the 22nd day of May, 1901, against the form of the ordinance in such case provided by the city of Denver.

FRANK J. KRATZE.

44 No. 28254.—In police magistrate court,—Complaint.—Wine room—for violating ord.—The City of Denver *vs.* Dan Cronin.

STATE OF COLORADO, } ss:
City of Denver, }

Kratke being duly sworn on his oath say- that the within complaint is true as he very believes.

FRANK J. KRATKE.

Subscribed and sworn to before me this 23rd day of May, A. D. 1901.

R. J. BYRNE,
Clerk of Police Magistrate Court.

11. That said defendant appeared before the police magistrate of said city of Denver upon being notified of the filing of said complaint, and on, to wit, the 23rd day of May, A. D. 1901, the police magistrate of said city of Denver found defendant guilty of violation of said ordinance and fined the defendant the sum of fifty dollars and costs, from which judgment defendant appealed to this court, and this case now stands for trial and determination
45 upon said complaint, and this statement of facts. That said article No. 15 of said ordinance No. 101 is made a part of this stipulation as the same appears in the said compiled ordinances of 1898.

H. M. ORAHOOD,
N. B. BACHTELL,
Attorneys for Plaintiff.
T. J. O'DONNELL &
MILTON SMITH,
Attorneys for Defendant.

7/20/1/4.

Upon that statement of facts, we submit the case.

Mr. SMITH: The defendant moves that he be discharged on the ground that the sections of the ordinance, and the provisions thereof, under which the complaint is made here, are illegal, unconstitutional, being contrary to the constitution of the State and to the Constitution of the United States, void and therefore the complaint is a nullity and the judgment of the police court is a nullity, and a judgment by this court would be a nullity,—that is, a judgment against this defendant.

No, I suppose, upon that proposition, your honor,—well, I don't care to take up the time of the court by citing to your honor all the authorities pro and con upon the proposition. There are a great many of them.

The COURT: Have you got a brief on this question?

Mr. SMITH: Have I got a brief? Yes, sir; I have one.

46 The COURT: Have you got one, Mr. Bachtell?

Mr. BACHTELL: No, I have not; but I have my authorities here in court.

The COURT: I would like to look at the authorities upon this question because I am interested in it. I would like to look at them.

Mr. SMITH: I can bring you up a copy of the brief that I had in that injunction case. There are only two or three authorities that I care anything about in reference to it.

The COURT: Will you send me the citations?

Mr. SMITH: Yes, sir.

The COURT: Will you send me yours, Mr. Bachtell?

Mr. BACHTELL: Yes, your honor.

The COURT: That is the only question in it, as to whether this

motion should be granted or sustained upon the grounds stated in the motion?

Mr. SMITH: Yes, sir; that is the way it looks to me.

Mr. BACHTELL: I think Judge Palmer's judgment cites all the authorities on Mr. Smith's contention.

The COURT: I was away at the time of that opinion, and I don't know what it was. But I will look over the authorities and I would like to see the authorities on both sides.

Mr. BACHTELL: I think the matter ought to be presented to your honor fully and completely. Of course Mr. Smith has a
47 perfect right to make his motion and rest his case upon that motion without the authorities, the citations or arguing it, as he sees fit; but I say, I think it ought to be presented to your honor fully because in my opinion this is the only court that has any jurisdiction whatever to determine this ordinance or any other ordinance of the city of Denver, sitting as your honor does in this case, tried *de novo* on appeal from the police court. The supreme court has said this is the proper tribunal and the only tribunal that has the right to decide questions of this kind.

The COURT: I will look into the authorities.

Mr. BACHTELL: I have the books here.

The COURT: I will look into them if you will leave them here.

Mr. BACHTELL: I will mark them and note them.

Mr. SMITH: I would like to have the record show that we make this motion on the ground that the ordinance is contrary to the constitution of the State and also to the Constitution of the United States.

The COURT: Yes, let the record so show. I will take this matter under advisement and will prepare my opinion.

And the above and foregoing is all the evidence introduced or offered by the respective parties on the hearing of said cause.

And afterward and on, to-wit, the 27th day of July, A. D., 1901, the court having considered the facts in said cause to him presented, and also having fully investigated the authorities cited by
48 counsel for the respective parties herein, and being now fully advised in the premises, did render the following opinion in said cause, that is to say:

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the County Court.

THE CITY OF DENVER, Plaintiff, }
vs. } No. 30373. Opinion.
DANIEL CRONIN, Defendant. }

The defendant, Daniel Cronin, was fined in the police court $50 and costs, for violating general sections 745 and 746 of the ordinance

of the city of Denver, which provide *inter alia* that any saloon keeper who shall keep in connection with, or as a part of such saloon any wine room or other room into which any female person shall be permitted to enter from the outside, or from such liquor saloon, and be there supplied with any kind of liquor, or who shall suffer or permit any female person to be or remain in such saloon for the purpose of there being supplied with any kind of liquor, or
49 who shall cause to be employed or procured any female person to wait or in any manner attend on any person within such saloon, or solicit drinks in any such place, shall upon conviction be fined in a sum of not less than five nor more than $500.

Defendant admits that the two certain women mentioned in the complaint against him were upon the premises where he conducted his liquor saloon for the purpose of being served with intoxicating liquor; that they were so served, paid therefor and drank the same upon the premises. He denies, however, that he is guilty of any criminal offence, and has filed a motion asking that he be discharged on the ground that the sections of the ordinance under which the complaint is made are illegal and unconstitutional, being contrary to the constitution- of the State and of the United States, and that therefore the complaint is a nullity, that the judgment of the police court is a nullity, as would likewise be the judgment of this court should it confirm the judgment of the court below, or impose upon him any fine whatever.

I cannot ignore the fact that in a very recent case the identical question of law as to the validity of the ordinance in question now raised in this court was raised and determined adversely to the city by one of the learned judges of our district court. I feel therefore that I should not, in view of the courtesy and respect due from this court to the district court, and especially as I am inclined to a different view of the law, pass upon the same question without stating the reasons in support of my conclusions.

50 In matters of this character, the jurisdiction of this court, as has been repeatedly held by our supreme court, is coordinate with that of the district court, and its opinion in relation to such matters entitled to just as much respect and effect. Furthermore, it is undoubtedly the law, in my opinion, that this court, and not the district court, is the forum, and the only forum this side of the appellate courts that in the ordinary and proper course of procedure has any right, authority or jurisdiction to interpret the ordinances of the city of Denver. Violators of the city ordinances are prosecuted in the police court. The right of appeal is to this court only, and thence to the supreme court; thus the accused who may be charged with their violation is afforded a speedy, plain, and to my mind, sufficient and adequate remedy at law, as the defendant will be afforded in this case.

The ordinances are not void. They do not constitute the slightest infringement upon the constitutional rights of women as those rights are lawfully tested and properly understood. I shall endeavor

to show that this conclusion is sustained by all the authority on the subject and opposed by none.

In Phillips *vs.* City of Denver, 19 Colo. 183, Mr. Justice Elliot announced the following rule to be observed by the court in the construction of municipal ordinances:

"In determining whether a municipal ordinance is valid, the following distinction is to be observed: An ordinance expressly authorized by specific and definite legislative authority will be upheld unless it conflicts with the constitution of the State or nation, while an ordinance which the municipality assumes to pass by virtue of its incidental powers, or under a general grant, of authority, will be declared invalid, unless it be reasonable, fair, and impartial, and not arbitrary or oppressive."

An examination of the city charter can leave no doubt
51 that the ordinance in question is of the character first referred to in that it is expressly authorized by specific and definite legislative authority. By section 20, article II, chapter 1, sub-division 12, of the city charter, the city council is given exclusive power to provide for licensing, taxing and regulating all tippling houses, dram shops, and the selling and giving away of intoxicating liquors by any person within the city, and to tax and regulate the same, it being specifically provided, *inter alia*, that no such institution shall be kept open on Sunday, and that no wine room or other place with doors, curtains or screens, in which any female person shall be permitted to enter, shall be kept in connection with any such dram shop, liquor saloon or tippling house. It thus appears that while the legislature vested in the city council the exclusive power to license and regulate tippling houses and saloons, and the selling and giving away of intoxicating liquors, they are equally vested with the power to regulate and impose the conditions upon which such business shall be conducted, being expressly enjoined, however, as a condition to such right to so license and regulate, to see to it that no female person shall be permitted in or about places where liquor is sold, so that the ordinance claimed to be violated is not the result of any incidental power of the city council but simply an execution of the express mandate and direction of the legislature. In fact it may be said the ordinances are the joint production of the legislative bodies of both State and city, and it is the duty of the court to uphold them unless they conflict with the constitution.

It is a well settled principle of constitutional construction
52 that the law in question must be upheld unless it clearly conflicts with the constitution. If there is only a doubt as to its constitutionality that doubt must be resolved in favor of the law, but fortunately under the authorities which follow governing the law here considered, there is to my mind no shadow of doubt as to its constitutionality.

The only case cited by counsel for the defendant or the learned district judge in support of the contrary view *in In re* Mary McGuire, 57 Cal. 604. It is claimed that this case upholds the con-

tention that the ordinances in question discriminate between the sexes as to the pursuit of lawful occupations or pleasures, and violate those general provisions common to all constitutions which, briefly summarized, provide that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws; that all persons have the same natural, essential and inalienable rights of enjoying and defending their lives and liberties, and of acquiring, possessing and protecting property and of seeking and obtaining their safety and happiness, and that no person shall be deprived of life, liberty or property without due process of laws, and that all citizens of the State, regardless of race, color or previous condition of servitude shall be entitled to full and equal enjoyment of the accommodations and privileges of inns, restaurants, churches, barber shops, public conveyances, theatres and other places of amusement.

I have carefully considered the case of *In re* McGuire
53 and I cannot agree that it at all justifies the defendant's contention.

Six supreme judges participated in its determination, and three of them did decide, by a course of reasoning not necessary to follow, but clearly, to my mind, unsatisfactory and untenable, that the ordinance in question forbidding the employment of females where intoxicating liquors were sold, did violate the constitutional provision that "no person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession." The three other judges dissented from such conclusion, two of them on the broad proposition that it was not the law, while the third, Judge McKinstry, agreeing with his dissenting associates to such extent, concurred in the judgment on other grounds not applicable to this case, as his language, so appropriate here, will show. He says:

"I am not prepared to say, however, that the supervisors cannot, by proper legislation, prevent females from pursuing avocations which, although permissible to men, involve a propinquity of the sexes under such circumstances as may lead directly to immoral results or to the discretion of the prudent reserve between members of the opposite sexes which it is the province of wise legislation to encourage. It has always been understood that the prevention of such results was a proper exercise of the police power of the State. By such legislation the woman (or man, as the case may be) is not prohibited from pursuing any lawful business, vocation or profession 'on account of her sex.' She is prohibited because of the immorality or indecency connected with the business. For example: There might be very good reason why woman (and not men) should be employed as attendants at a *bathing* establishment to which their own sex alone have admission; but if a law should be enacted prohibiting the employment of females as attendants at public baths—frequented by men only—would it be adjudged that the law

was unconstitutional because persons would thereby be pro-
54 hibited from pursuing a vocation 'on account of sex'? The constitution provides that no persons shall be prohibited from pursuing any *lawful* business *merely* because of his or her sex, but it does not prohibit the legislature from declaring certain conduct unlawful, even though it may constitute a 'business.' The constitution does not, in my view, deny the power to enact such legislation as may prevent the intrusion of men into the *conjoint* pursuit with women of occupations which considerations of decency and morality require should be carried on by the latter separately and *vice versa*. It is possible that the legislature is not permitted to indulge in an over-refined sense of propriety—amounting to mere sentimentality—and thus exclude females from taking part in honest occupations simply because they have in the past ordinarily been carried on solely by men, and may therefore seem, in the prejudiced eyes of a more fortunate portion of the community, to detract from the modest reserve and retirement of the sex, but when competent legislative authority has declared that the pursuit of certain occupations by females impinges upon public decency, or, in its consequences, may involve a violation of public morality, I think the courts can declare the law unconstitutional *only* when it clearly appears that indecency and immorality are not connected with, nor a consequence of, the prosecution of such occupations by females."

The learned judge then proceeds to say that he does not agree that the article of the constitution in question, or any constitutional provision, prohibits the passage of any law or ordinance which would prevent the presence of women as attendants or otherwise, at liquor saloons, bar rooms, etc., but consented to the discharge of the accused because the particular ordinance in question was void in that it was unreasonable, of ambiguous import and not of uniform operation, (the ordinance permitting the female relatives of the liquor dealer to serve liquor, but not other females), and proceeds to point out wherein this is true of the ordinance there considered on account of certain facts and circumstances, unnecessary to mention, as they cannot possibly be claimed to exist as to the ordinances here involved.

The result of a divided court in that case on the general
55 proposition here involved would in this State have the effect of sustaining the *nisi prius* court which upheld the validity of the ordinance, so that I rather look upon the case of Mary McGuire in 57 Cal. when fully analyzed as sustaining and not opposing the conclusions here reached. But conceding it to be a clear and satisfactory authority against the view I take of this question, we have only to look to subsequent California cases (one of which is of very recent date), which are sweeping repudiations of any such doctrines, and as against which it could not stand for a moment as the law of that State, or as sustaining the contention claimed for it. And in all such latter cases the court seems to have been unanimous in its conclusions, there being apparently no division of opinion upon this important question.

In re ex parte Hayes, 33 Pac. Rep. 337, (98 Cal. 555) decided in 1893, the question was squarely presented to that court as to whether or not an ordinance making it unlawful to sell intoxicating liquors in dance houses or other places where females attend as waitresses was such a discrimination against women in the matter of employment as would bring it in conflict with the identical section of the constitution referred to in the McGuire case providing that "no person on account of sex shall be disqualified from entering upon or pursuing any lawful business, v ›cation or profession." (Which provision is much broader than any similar provision of our own constitution. The court says:

"The fundamental principles which underlie and support legislation of this character were announced by this court in *Ex parte* Christensen, 85 Cal. 208, 24 Pac. Rep. 747, and also received an exhaustive discussion by the Supreme Court of the United States in the case of Crowley *v.* Christensen, 137 U. S. 86, 11 Sup. St. Rep. 13; and upon the authority of those cases we hold that the ordinance under consideration here is a valid exercise of the power conferred by section 11 of article 11 of the constitution of this State upon
56 counties, cities and towns to make "all such local police, sanitary, and other regulations as are not in conflict with general laws.

It is claimed, however, by the counsel for the petitioner that the ordinance makes a discrimination against women in the matter of employment, and is therefore in conflict with sec. 18, art. 20, of the constitution of this State, which is in these words: 'No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.' This section does not, in our opinion, operate as a limitation upon the power of the State or its municipalities to prescribe the conditions upon which the business of retailing intoxicating liquors shall be permitted to be carried on, or in regulating the manner in which such business shall be conducted."

The court thus considered the question not only settled in favor of the validity of the ordinance by the highest tribunal of the State, but also of the Supreme Court of the United States. The question was again before the supreme court of California in 1894, in the case of Foster *vs.* The Board of Police Commissioners of the City and County of San Francisco, 37 Pac. Rep. 763, (102 Cal. 483). In this case the court ably and elaborately reviews the question using, *inter alia*, the following language:

"The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquors has therefore been, at all times, by the courts of every State, considered as the proper subject of legislative regulation. There is no inherent right in a citizen thus to sell intoxicating liquors by retail. See also Cooley, Const. Lim. (6th ed.) p. 342.

* * * * * * *

It is also insisted that the ordinance under consideration is objectionable for want of uniformity, and that it discriminates between different persons. That it affects all persons of certain classes without discrimination, and as to them acts uniformly, cannot be questioned. The question, however, is as to the power to discriminate at all. The power thus to discriminate is well settled by the authorities hereinbefore cited, and by many others. This power is exercised in relation to many other occupations besides that of selling liquor, and when promotive of the best interests of the people is always sustained.

* * * * * * *

57 'The legislature cannot discriminate or grant an indulgence to one which is not accorded to another.' But the legislature does discriminate, and in many cases properly, while in *in* those cases where the public is affected only by depriving an individual of a right common to all others, the exercise of which is not attended with evil consequences, the above quotation applies.

* * * * * * *

His protestation that he did not intend to and would not in the future procure or permit females to wait upon his customers does not aid him. A man who has in the past shown himself willing to debauch the morals of the community to increase his business would not in the future refrain from any line of conduct, in the prosecution of his business, which would not bring upon himself, personally, the penalty of the law, whatever of evil it might bring to others. The ordinance was therefore not only constitutional, but wise, and should be scrupulously observed by those entrusted with its execution."

It will thus be noted that the court expressly conceded that while the constitutional provisions in question claimed to be violated by these ordinances are such as to prevent the *the* legislature from discriminating or granting an indulgence to one which is not accorded to another, nevertheless do not apply at all where such ordinances are enacted by virtue of what is commonly known as the police power in the exercise of which there may be actual discrimination, so long as it is a proper exercise of this wise, just and beneficent prerogative vested in all legislative bodies permitting them to enact salutary laws to protect the morals, etc. of the people.

Losing sight of the distinction in favor of the police power in considering the constitutional provisions in question, may be the cause of much that is confusing and misleading in finding such ordinances a violation of such provisions. This is again aptly illustrated by the supreme court of California in the case of *Ex parte*

Christensen, 85 Cal. 208, (recently affirmed by the Supreme
58 Court of the United States) where that court declares that

"Whatever force this objection may have in reference to licenses to carry on the ordinary avocations of life, which are not supposed to have any injurious tendency, it has no force in cases of

this character (regulating liquor traffic). It is well settled that the governing power may prohibit the manufacture and traffic in liquor altogether, provided it does not interfere with interstate commerce, and if the governing power can prohibit a thing altogether, it can impose such conditions upon its existence as it pleased." The distinction observed in the above language is an important one, namely: "To carry on the ordinary avocations of life, which are not supposed to have any injurious tendency." It may be then a discrimination against a woman to preclude her from the saloon, but it is a perfectly legal, wise, and just discrimination sanctioned by all the courts, and in no way conflicts with the rightful exercise of any of her constitutional rights as such rights are properly used and understood. It is no more of an illegal discrimination than those wholesome regulations barring minors and habitual drunkards from saloons, the legality of which has never been questioned, yet their constitutional rights are just as sacred as those of others.

Again, in State *vs.* Reynolds, as sheriff, decided by the supreme court of Montana, in 1894, 36 Pac. Rep. 449, (14 Mont. 333) the same question in principle was before the supreme court of that State, and the court used the following language:

59 "Petitioner's counsel urge the proposition that the provisions of said statute are unconstitutional because, in effect, it prohibits a certain class, *i. e.* women, from being employed in a place where intoxicating liquors are sold, and therefore restrains such persons from engaging in a lawful employment. This statute does not forbid the employment of women or minors, but it does prohibit all persons and companies from selling intoxicating liquors in a place where women and minors are employed or assembled for the purposes of the business. There appears to be wisdom and propriety in this provision, as a police regulation, and we fail to find in it the infringement of any provision of our constitution."

The same question was before the supreme court of Ohio in Bergman *vs.* Cleveland, 39 Ohio State Reps. 651, and the supreme court of that State held, that ordinances in substance identical with those here under consideration were not unlawful discriminations against women and did not violate any part of the constitution of the State *of* or the United States, but were wise regulations properly, legally and justly made by legislative bodies.

The State of California has been particularly selected for authority from the States upon the question at issue because the only different decision claimed to exist by defendant, or cited by the learned district judge, was the case of McGuire in 57th Cal. It fairly appears, however, that not only that State, but others have completely and overwhelmingly silenced the contention that the ordinances in question are illegal discriminations, or conflict with the State constitutions similar to our own, or with the Federal Constitution. We think the Supreme Court of the United States in numerous cases has equally settled this question in accordance with the views herein announced, by opinions, if not involving similar facts, at

least involving similar principles, so that reference to one of two will suffice.

60 We quote the following language from Mugler *vs.* State of Kansas, 8 vol. Sup. Ct. Rep. 273.

"Referring to the *intention* that the right to sell intoxicating liquors was secured by the fourteenth amendment, the court said that 'so far as such right exists it is not one of the rights growing out of citizenship of the United States.' In Beer Co. *v.* Massachusetts, 97 U. S. 33, it was said that, 'as a measure of police regulation, looking to the preservation of public morals, a State law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States.

* * * * * * *

As was said in Munn *vs.* Illinois, 94 U. S. 124, while power does not exist with the whole people to control rights that are purely and exclusively private, government may require 'each citizen to so conduct himself, and so use his own property, as not necessarily to injure another.' But by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker will injuriously affect the public? Power to determine such questions, so as to bind all, must exist somewhere; else society will be at the mercy of the few, who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please. Under our system that power is lodged with the legislative branch of the Government. It belongs to that department to exert what are known as the police powers of the State and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health or the public safety."

While it is true that regulations in favor of health and morals of the people are inaugurated by the legislatures, the courts are to determine whether such regulations conflict with the Constitution, as they occasionally do, but the Supreme Court of the United States has held that where such regulations are enacted in good faith for the protection of the public health, public morals or the public safety of the community and have a substantial relation to those objects it is the duty of the court to so adjudge and give effect to such laws, (Mugler *vs.* Kansas, *supra*).

61 It being then a prerogative of the courts to determine whether the act is really in the interest of morality as claimed by the legislative power, a few observations in this respect become pertinent. Keeping in view these principles as governing the relation of the judicial and legislative departments of the Government, is it possible to perceive any ground for the judiciary to declare that the ordinances in question have no substantial relations to the preservation of public morals, or were not fairly adapted to the end of protecting the community against evils which confessedly result from the intermingling of the sexes in consuming ardent spirits in

saloons, wine rooms or dance halls? I think not. With all due respect to the learned district judge, to my mind there is not the slightest justification for a contrary holding on the ground that the legislative department of the Government under the guise merely of police regulation is by the ordinances in question aiming to deprive a class of citizens of their constitutional rights. A thousand times rather by such regulations do they preserve to the people the very rights claimed to be invaded. Who would dare maintain that the intermingling of the opposite sexes under such circumstances would not lead to immoral results and the desecration of those decent relations that should exist between them? Could a more debasing custom be well imagined to exist in a civilized and Christian community? It may be well to recall what history substantiates, that the shocking debauchery and corruption that accompanied the periods of decay of nations that have perished were largely the result of drunken revels of opposite sexes in the public wine places of their great cities.

62 It may be safely asserted that every large city in this country, has at least had the decency to recognize the immoral consequences of the conditions referred to as to discourage and prevent it by similar wholesome regulation. Such enactments have always been upheld by the courts when called upon and this court shall not depart from the rule. The ordinances should be enforced with an unsparing hand by those in authority, and to that end every proper aid should be afforded by all the power of the judiciary. Any other course cannot but be fraught with the most perilous consequences to the morals, health and happiness of the people.

The motion of the defendant for his discharge is denied. The fine imposed by the police court will be doubled and the order entered accordingly.

BEN B. LINDSEY, *Judge.*

Denver, July 27th, 1901.

Mr. LIVINGSTONE (appearing for the defendant in the absence of Mr. Smith): Please note an exception to the overruling of the motion to dismiss, and also to the judgment. How many days will the court allow us within which to prepare and tender a bill of exceptions?

The COURT: Do you wish to take an appeal?

Mr. LIVINGSTON: No, sir; we will take the case to the Supreme Court on a writ of error.

The COURT: Very well, you may have thirty days, if that will be sufficient.

Mr. LIVINGSTONE: That will be sufficient.

63 And forasmuch as the matters and things hereinabove set forth do not fully appear of record, the defendant respectfully tenders this, his bill of exceptions, and prays the court may sign and seal the same pursuant to the statute in such case made and provided, which, when so signed and sealed, may become a part of the record herein, which is accordingly done this 2nd day of August, A. D. 1901.

BEN B. LINDSEY, *Judge.* [SEAL.]

Tendered me for signature by counsel for the defendant this 2nd day of August, A. D. 1901.

BEN B. LINDSEY, *Judge.*

Correct:

H. M. ORAHOOD,
H. L. RITTER, &
N. B. BACHTEL,
Attorneys for Plaintiff.
T. J. O'DONNELL &
MILTON SMITH,
Attorney- for Defendant.

64 (Endorsed:) No. 30373 City of Denver, plaintiff, *vs.* Daniel Cronin, defendant Defendant's bill of exceptions, Filed in county court Arapahoe Co., Colo. Aug. 7, 1901. Thomas L. Bonfils, clerk, county court, Arapahoe county, Denver, Colo. Ben B. Lindsey, judge. Hubert L. Shattuck, clerk.

I, Thomas L. Bonfils, clerk of the county court of Arapahoe county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of all orders of court had and entered of record, complaint police court, appeal bond police court, transcript police court, notice, præcipe for transcript, together with the original bill of exceptions in a certain cause lately pending in said court, on the civil side thereof, wherein The City of Denver, was plaintiff and Dan Cronin, defendant.

65 *In witness whereof,* I have hereunto set my hand and affixed the seal of said court, at Denver, this 8th day of August, A. D. 1901.

[Seal County Court, Arapahoe County, Colorado.]

THOMAS L. BONFILS,
Clerk of the County Court,
By I. M. STRONG, *Deputy.*

(Endorsed:) No. 30373 City of Denver, plaintiff, *vs.* Dan Cronin, defendant. Transcript County court, Arapahoe county, Denver, Colo. Ben. B. Lindsey, judge. Hubert L. Shattuck, clerk. Filed in supreme court, Aug. 19, 1901, Horace G. Clark, clerk.

66 The Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error. } Error to the County Court of Arapahoe County.

Assignments of Error.

Now comes the plaintiff in error, by T. J. O'Donnell & Milton Smith, his attorneys, and says that in the record, proceedings and judgment aforesaid, there is manifest error in this, to-wit:

I.

The court erred in overruling the motion of the plaintiff in error, defendant in the court below, that the defendant be discharged on the ground that the sections of the ordinance and the provisions thereof under which the complaint in said action was made are contrary to the constitution of the State of Colorado and the Constitution of the United States, illegal and void.

II.

The court erred in his opinion and finding that the ordinance under which complaint was made against said defendant was constitutional and legal.

III.

The court erred in entering judgment in said cause in favor of the plaintiff.

67 IV.

The court erred in entering judgment in said cause against the defendant.

Wherefore plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for other errors in said record and proceedings being, may be reversed, annulled and altogether holden for naught.

T. J. O'DONNELL AND
MILTON SMITH,
Attorneys for Plaintiff in Error.

8/10/1/4

(Endorsed:) No. —. In the supreme court of the State of Colorado. Daniel Cronin, plaintiff in error, *vs.* The City of Denver, defendant in error. Assignments of error. Filed in supreme court August 19, 1901. Horace G. Clark, clerk. T. J. O'Donnell and Milton Smith, attorneys for plaintiff in error.

68 (Endorsed:) No. 4389. In supreme court State of Colorado. Daniel Cronin, pl'ff in error, *vs.* The City of Denver, def't in error. Transcript of record, bill of exceptions and assignment of errors. Filed in supreme court this 19th day of Aug. 1901. H. G. Clark, clerk.

69 And afterwards, and on, to-wit, the 7th day of October, A. D. 1901, the same being one of the regular juridical days of the September term, A. D. 1901, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit:

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error. } 4389. Error to the County Court of Arapahoe County.

At this day, upon consideration thereof, it is ordered by the court that the appellee be and is hereby ruled to file his brief within fifteen days from this date, defendant in error to answer within ten days thereafter and plaintiff in error to reply in ten days.

It is further ordered that the motion to advance be and is hereby denied, with leave to renew when case is at issue.

70 And afterwards, and on to-wit, the 21st day of December, A. D. 1901, the same being one of the regular juridical days of the September term, A. D. 1901 of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit:—

In re Stipulations.

At this day upon consideration thereof, it is ordered by the court that the stipulations of parties in the following cases for an extension of time for filing abstracts and briefs be, and the same are hereby allowed:—

* * * * * * * *

DANIEL CRONIN
vs.
THE CITY OF DENVER. } 4389.

71 And afterwards, and on to-wit, the 24th day of December, A. D. 1901, the same being one of the regular juridical days of the September term, A. D. 1901, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit:

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error. } 4389. Error to County Court of Arapahoe County.

At this day for good cause appearing, it is ordered by the court that this cause be, and the same is hereby advanced for final hearing.

72 And afterwards, and on to-wit, the 8th day of April, A. D. 1902, the same being one of the regular juridical days of the January term, A. D. 1902, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit:—

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error.
} 4389. Error to the County Court of Arapahoe County.

Now comes Milton Smith, Esquire, attorney for plaintiff in error, and H. L. Ritter, Esq., attorney for defendant in error, also comes; and thereupon this cause is argued orally and submitted to the consideration and judgment of the court.

73 And afterwards, and on to-wit, the 5th day of May, A. D. 1902, the same being one of the regular juridical days of the April term A. D. 1902, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit:

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error.
} 4389. Error to the County Court of Arapahoe County.

At this day this cause coming on to be heard as well upon the transcript of proceedings and judgment had in said county court in and for the county of Arapahoe as also upon the matters assigned for error herein; and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the court; and it appearing to the court that there is no error in the proceedings and judgment aforesaid of said county court. It is therefore considered and adjudged by the court, that the judgment aforesaid of said county court be, and the same is hereby affirmed, and stand in full force and effect; and that this cause be remanded to said county court for such other and further proceedings according to law as shall be necessary to the final execution of the judg-
74 ment of said county court, in the cause, notwithstanding the said writ of error. It is further considered and adjudged by the court that said defendant in error do have and recover of and from said plaintiff in error its costs in this behalf expended to be taxed, and that it have execution therefor. And let the opinion of the court filed herein be recorded.

And thereupon, and on the same day, to wit, the 5th day of May, A. D. 1902, there was filed in the office of the said clerk the opinion of this court in said cause.

And said opinion is in words and figures as follows, to-wit:—

75 DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error.
} 4389.

Error to the county court of Arapahoe county.

Per curiam:

In this action the only question before us is as to the constitutionality of an ordinance of the city of Denver, and a provision of the

city charter upon which it is based, which were held valid in the case of Frank Adams, *et al. v.* Daniel Cronin, *ante* p. —. The judgment of the county court was to the same effect. The decision here is controlled by our decision in the Adams case *supra*, and since the judgment of the county court is in harmony with our views, it is affirmed.

Affirmed.

And afterwards, and on to wit, the 29th day of May, A. D. 1902, came the said plaintiff in error, by his attorney, and filed in said court and in said cause his petition for rehearing:

And the said petition for rehearing is in words and figures as follows, to-wit:—

76 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error.
} No. 4389. Error to the County Court of Arapahoe County.

Petition for Rehearing.

Now comes the said plaintiff in error, by Milton Smith, his attorney, and respectfully shows unto the court that this honorable court erred in its decision and judgment made and rendered in said cause in the following particulars:

1. The court erred in affirming the judgment of the county court.

2. The court erred in deciding that sections 745 and 746 of the Compiled Ordinances of the City of Denver are valid and not in conflict with the provisions of the constitution of the State of Colorado and of the United States.

3. That the decision of this court that said sections 745 and 746 of the Compiled Ordinances of the City of Denver are valid is erroneous because such decision appears by the opinion given in cause numbered 4392 to be based upon the finding and decision of this court that said sections are restrictions upon saloon keepers only,
77 which could properly be made and enforced against saloon keepers, and that such restrictions do not constitute a violation of the rights of women under the Constitution of the United States.

4. That the decision of this court that sections 745 and 746 of the Compiled Ordinances of the City of Denver are valid is erroneous because such decision appears by the opinion given in cause numbered 4392 to be based upon the finding and decision of this court that such ordinance was enacted in aid of public morality, notwithstanding there is nothing in the record in this case showing that such was the purpose of such ordinance, or that the enforce-

ment of such sections of said ordinance would in any way aid or affect public morality.

Wherefore, plaintiff in error prays that a rehearing may be granted in said cause, that the judgment of the county court of Arapahoe county be reversed, and that such other orders may be entered in said cause as shall be proper.

MILTON SMITH,
Attorney for Plaintiff in Error.

(Endorsed:) No. 4389 In the supreme court of the State of Colorado Daniel Cronin, plaintiff in error, *vs.* City of Denver defendant in error. Error to the county court of Arapahoe county. Petition for rehearing. Milton Smith, attorney for plaintiff in error. Filed in supreme court, May 29 1902, Horace G. Clark, clerk.

78 And afterwards, and on to-wit, the 2d day of June, A. D. 1902, the same being one of the regular juridical days of the April term, A. D. 1902, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to wit:

DANIEL CRONIN, Plaintiff in Error, *vs.* CITY OF DENVER, Defendant in Error.	4389. Error to the County Court of Arapahoe County.

At this day, upon consideration thereof, it is ordered by the court that the petition of plaintiff in error for a re-hearing herein be and the same is hereby denied.

79 I, Horace G. Clark, clerk of the supreme court of the State of Colorado, do hereby certify that the foregoing is a true and correct copy of the transcript of record, bill of exceptions and assignment of errors filed August 19th, 1901, and now remaining of record in my office, and of all orders had and entered of record in said court, of petition for rehearing, opinion of the said court, and the final judgment entered in a certain cause in the said court lately pending, wherein Daniel Cronin was plaintiff in error and The City of Denver defendant in error.

I further certify that the accompanying printed brief and argument for plaintiff in error, brief and argument for defendant in error, reply brief for plaintiff in error, brief for plaintiff in error on motion for rehearing, and additional brief for plaintiff in error, are true and correct copies of said briefs and arguments as the same now remain on file in this cause in my office.

Seal Supreme Court, State of Colorado.

Witness my hand and the seal of said supreme court, affixed at my office, in the city of Denver, this 22nd day of July, A. D. 1902.

HORACE G. CLARK, *Clerk*,
By JOHN B. COOKE, *Deputy*.

80 [Endorsed:] No. 4389 In supreme court State of Colorado. Daniel Cronin, plaintiff in error, *vs.* The City of Denver, defendant in error. Transcript of record.

81 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error.

No. 4389. Error to the District Court of Arapahoe County.

Brief and Argument for Plaintiff in Error.

T. J. O'Donnell, and Milton Smith, attorneys for plaintiff in error.

82 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error.

No. 4389. Error to the District Court of Arapahoe County.

Brief and Argument for Plaintiff in Error.

Complaint was made against the plaintiff in error in the police magistrate court in the city of Denver charging him with violation of certain sections of the compiled ordinances of the city of Denver, and judgment was entered by said police magistrate court, fining the plaintiff in error $50.00 and costs. Plaintiff in error, the
83 defendant in the said suit, appealed to the county court of Arapahoe county, and upon the trial of the cause in the county court a statement of facts was agreed upon and filed. From this statement of facts it appears:

4. That the said defendant has fitted up at the corner of Eighteenth and Champa streets, in said city of Denver, and at a number known as 1761 Champa street, a saloon, and has been at said place for more than nine years last past, carrying on said business under a license from the said city of Denver, covering all the premises above mentioned, and all parts thereof hereinafter described.

5. That said premises are so arranged that in passing from the main bar room one enters a hallway, on one side of which are two smaller rooms, and on the other side of said hallway is one room, which last mentioned room is used partly for a storage room and partly as a place for serving beverages and drinks; that the other two rooms above mentioned are used for the purpose of serving drinks in to customers and patrons of the said defendant's place. That in the rear of said rooms is another hallway, which leads out onto Eighteenth street, in the said city of Denver. That all of said

premises so described are included in one large room, but which room is partitioned off and divided by partitions extending toward, but not reaching, the ceiling. That in the conduct and management of said business it has been the custom and habit of the
84 said defendant to serve beer, whisky and other drinks to women the same as to men, and in so doing the said smaller rooms hereinbefore described have frequently been used for said purpose.

6. That article XV of ordinance No. 101, of the series of 1898, is entitled "Liquor saloons, dram shops and tippling houses," and contains, among other provisions, sections reading as follows:

"SEC. 745. Each and every liquor saloon, dram shop or tippling house keeper, licensed under the provisions of this article, who shall by himself or his agent, clerk or servant permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without door or doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon, dram shop, or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided.

"SEC. 746. No person, whether as principal, clerk, agent, or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or
85 given away, or any place adjacent thereto, or connected therewith, in any manner whatsoever, either by doors or otherwise, shall suffer or permit any female person to be or remain in such liquor saloon, dram shop, tippling house, or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house, or liquor saloon, or in any place adjacent thereto, or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait or attend on any person, or solicit drinks in any such place."

8. That on, to wit, the 22d day of May, A. D. 1901, at about the hour of nine o'clock in the afternoon, certain women, viz.: Mary Doe and Alice Roe, were upon the above premises of the said defendant, for the purpose of there being served with intoxicating liquors by said defendant in one of the rooms above mentioned, and said liquor was then drank upon said premises and paid for, being the violation charged in complaint hereinafter set out.

86 9. That the said women were not intoxicated on said premises, and that there were no disorderly persons upon said premises at said time.

The defendant moved for a discharge on the ground that the sections of the ordinances and the provisions thereof under which complaint was made were illegal and unconstitutional, being contrary to the constitution of the State of Colorado and the Constitution of the United States. The court denied this motion and entered judgment against the defendant, fining him $100.00 and costs.

Errors assigned to the judgment of the county court, and the only question raised by the assignments of error is as to the validity of such judgment and the constitutionality of the ordinance upon which the judgment was based. At about the time the judgment against this defendant was entered in the police magistrate court he brought suit in the district court of Arapahoe county against the fire and police board and chief of police of the city of Denver and procured an injunction against further prosecution upon similar charges and interference with his business. A final judgment was entered in that cause in favor of the plaintiff in error here, which cause was appealed to this court by the defendants and is now before this court for determination, being cause numbered 4392. The question presented upon this record is also involved in the case appealed from the district court, and the two cases can properly be heard and determined together. In this brief, however, we shall only present the question based upon the constitutionality of
87 the ordinances under which the plaintiff in error was convicted and fined.

The specific charge in the complaint is a violation of section 746 of the ordinances (abstract, page 2), and the statement of facts shows that the particular violation charged is that the defendant suffered or permitted a female person to be or remain in his liquor saloon for the purpose of there being supplied with liquor. These provisions of the ordinances are based upon the fifth paragraph of subdivision 12 of section 20 of article II of the charter, which reads as follows:

That no liquor saloon, dram shop or tippling house shall have or keep in connection with or as part of such saloon, tippling house or dram shop, any wine room or other place, either with or without doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such tippling house or dram shop, and there be supplied with any kind of liquor whatsoever.

The charter prohibits the keeping of a wine room or other place in connection with a saloon into which any female person shall be permitted to enter from the outside or from the saloon and there be supplied with liquor. The statement of facts shows that in this case the female persons were upon the premises of the defendant and were served with liquor in one of the rooms mentioned in the statement, which was, in fact, a wine room. The ordinance, therefore, so far as it covers the offense charged in this case, is authorized by this provision of the charter.

88 The rule to be observed in the construction of a municipal ordinance is stated in the case of Phillips *vs.* City of Denver, 19 Colo., 183, as follows:

"In determining whether a municipal ordinance is valid, the following distinction is to be observed: An ordinance expressly authorized by specific and definite legislative authority will be upheld unless it conflicts with the constitution of the State or nation, while an ordinance which the municipality assumes to pass by virtue of its incidental powers, or under a general grant of authority, will be declared invalid, unless it be reasonable, fair, and impartial, and not arbitrary or oppressive."

Neither the legislature of the State nor the council of the city has authority to violate the constitutional guaranties under the guise of measures claimed to be for the protection of the public morals, the public health or the public safety.

In the case of Mugler *vs.* Kansas City, 123 U. S., 623, which is considered to be a leading case upon this subject, it is said:

"It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the State. There are, of necessity, limits beyond which legislation can not rightfully go. While every possible presumption is to be indulged in favor of the valid-
89 ity of a statute, *Sinking Fund Cases*, 99 U. S., 718 (25,501), the courts must obey the Constitution rather than the law-making department of Government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To what purpose,' it was said in *Marbury vs. Madison*, 5 U. S., 1 Cranch., 137, 167 (2: 60, 70), 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

The court of appeals of this State quotes from this decision
90 in the case of Platte, etc., Co. *vs.* Lee, 2 Colo. Ct. App., 184, and the case is also quoted from by this court in Platte, etc., Co. *vs.* Dowell, 17 Colo., 376.

The sale of intoxicating liquors is not an unlawful business. There is no constitutional provision prohibiting the sale of liquor to either men or women. Unless there is a constitutional prohibition a woman has as much right under the Constitution of the United States, and of the State of Colorado, and laws of the State of Colorado, to enter a saloon and purchase a drink of whiskey as a man.

If she has the right to purchase, the same as a man, the saloonkeeper has a right to sell to her the same as to a man, and any ordinance which prevents him from selling to a woman when he may sell to a man is an invasion of his civil right and his property right, because the right to sell to a woman or to a man is a property right. Has a woman, therefore, the right to enter a saloon, or place adjacent thereto, where men are furnished with drinks, and there be supplied with liquors? The Constitution of the United States, 1 Mills, page 51, provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This section was not enacted for the benefit of men only, but for the benefit of all citizens. A woman is a citizen in the same sense that a man is a citizen. Her privileges and immunities as a citizen of the United States can not be abridged by the State of
91 Colorado or a municipality therein. She has the equal protection of the laws, and the State of Colorado can not discriminate against her in its legislation in favor of men.

The constitution of the State of Colorado, 1 Mills, page 145, provides:

"SECTION 276. That, all persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property, and, of seeking and obtaining their safety and happiness."

The word "person" is used, not male, nor female. It includes both. The male and the female have equal rights of enjoying their liberties and of seeking and obtaining their safety and happiness. Under this provision a female has as much right to seek her enjoyment and happiness in the taking of a glass of beer or whiskey as the male, and any act by the municipality of the city of Denver preventing her from so enjoying those rights is a violation of this constitutional provision. It is equally a violation of said United States constitutional provision and of the State of Colorado to prohibit a saloonkeeper from selling to a woman.

Section 298 of the constitution of the State of Colorado, 1 Mills, page 199, provides:

"That no person shall be deprived of life, liberty or property, without due process of law."

92 To prevent a saloonkeeper from selling to a woman if she has the right to purchase, and then under an ordinance fine him for so doing, takes his property without due process of law.

Section 404, 1 Mills, page 281, provides:

"The General Assembly shall, at the first session thereof, and may at any subsequent session enact laws to extend the right of suffrage to women of lawful age, and otherwise qualified according to the provisions of this article. No such enactment shall be of effect

until submitted to the vote of the qualified electors at a general election, nor unless the same be approved by a majority of those voting thereon."

In 1894 the legislature of Colorado passed an act, which was approved by the governor, page 446, 3 Mills, as follows:

"That every female person shall be entitled to vote at all elections, in the same manner in all respects as male persons are, or shall be entitled to vote by the constitution and laws of this State, and the same qualification as to age, citizenship, and time of residence in the State, county, city, ward and precinct; and all other qualifications required by law to entitle *male persons to vote shall* be required to entitle female persons to vote."

This act was approved by vote of the people of the State
93 of Colorado in accordance with the constitutional provision.

By said act women were given the right of suffrage in the State of Colorado. By that act the last vestige of inequality between man and woman under the laws of the State of Colorado was swept away. Any legislation whereby a woman is prevented from enjoying any right or privilege which a man enjoys, or of defending her rights in any tribunal, or otherwise, would be in violation of these constitutional provisions. Any enactment relating to the sale of liquors whereby a woman is prohibited from purchasing liquors under the same circumstances that a man is, is in violation of her rights under this constitutional provision and is in violation of the right given to a saloonkeeper to sell to a woman as well as to a man.

The only provision of the Colorado statutes restricting the sales of liquor is that no person shall sell without a license, and that no sale shall be made to an Indian, habitual drunkard or minor, nor to United States troops, nor between sunrise and sunset on election day. (Mills' Statutes, sections 1346, 1347, 1348, 1349, 1350, 1352 and 1353.) There is no prohibition of the sale of liquor to women. The legislature could not have enacted a valid law of that character. Even if there was a statute of that character, it would be unconstitutional and void, and the passing of a law of that character does not give a municipality the authority to enact a municipal ordinance of that character.

Section 423 of Mills, page 575, is as follows:

"That all citizens of this State, regardless of race, color or previous condition of servitude, shall be entitled to full and equal
94 enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, churches, barber shops, public conveyances, theatres, and other places of public resort or amusement."

The ordinance in question, we contend, is contrary to this constitutional provision and this last statutory enactment. We further contend that an ordinance to be valid as an exercise of police power must be a reasonable regulation. Such is the rule.

City of Chicago *vs.* Netcher, 183 Ill., 104.

May *vs.* People, 1 Colo. Ct. App., 157.

"Municipal ordinances are passed by a body representing the whole community, and for the purpose of regulating matters which affect the general welfare, and their provisions should, so far as practicable, affect each member of the community alike.

"Ordinances should neither favor nor discriminate against any person or class of persons, or any particular portion of the municipal territory. Their burdens and their benefits should rest equally upon all. The law of a municipality, like the laws of a State, should be uniform and of a general operation within the corporate limits, and any unnecessary, distinct discrimination between persons, classes or locations will invalidate them."

May *vs.* People, 1 Colo. App., 161.

Town of Lake View *vs.* Letz *et al.*, 44 Ill., 82.

95 The general policy of our law is that all persons, irrespective of sex, age or condition, shall have the same privileges.

Butchers' Union *vs.* Crescent City, 111 U. S., 757.

The provision of the United States Constitution that no State shall pass a law which shall deny the equal protection of the laws to every citizen applies with peculiar force to the provisions here, because if the State cannot pass such a law, a municipality cannot. This matter is well considered in the case of *In re* Mary McGuire, 57 California, 604. In that case an ordinance of the city of San Francisco was claimed to be in conflict with the constitution of the State of California, which constitutional provision was that:

No person shall on account of sex be disqualified from entering upon or pursuing any lawful business, vocation or profession.

That constitutional provision is no broader than those above quoted. It was there held that the ordinance prohibiting a woman from serving drinks in a bar room was in direct violation of said constitutional provision, and that is one of the provisions of the ordinance complained of in this case. It was contended in that case that the inhibition or disqualification was not on account of sex, but on account of its immorality, that such employment of a woman is of a vicious tendency, and hurtful to sound public morality; that such business is not *malum in se*, but of a hurtful and immoral tendency, and on account of this immoral tendency it was claimed that
96 the exercise of the authority given by that ordinance was nothing more or less than the exercise of the police power which is vested in the city, and the court said:

"This power to make police regulations is as much restrained by the section just referred to as is the legislative power vested in the senate and assembly. Both grants of power are alike made by the constitution, and both are alike restricted by this section of article. * * * It may be further said of it that it is prohibitory in its character, and needs no legislation to make it active in its effect. It is self-executing, and struck with nullity all acts in existence inconsistent with it as soon as the constitution went into operation, and all since passed."

With reference to the question of the immorality of allowing women to drink in saloons or wine rooms, the court said:

"We will add here that the law-making power of the State is ample to make laws affecting both sexes alike, and not inhibited by the constitution, which will accomplish the object so much desired—to prevent practices hurtful to public morality. The constitution was not framed with a disregard of the important considerations urged upon us in this regard. It merely directs that a law which is framed to accomplish this object by affecting or operating upon lawful callings, shall affect both sexes alike. We are not at lib-
97 *erty to say that such important* matters were overlooked in framing our organic law."

The ordinance and the law both being unconstitutional, there is no offense, and there can be no valid conviction and sentence; hence no jurisdiction for any purpose.

This decision is conclusive of the proposition that a woman has the same rights as a man. The whole policy of the law of this State has been to enlarge the rights of women and give them the same privileges and immunities which the male possesses.

If a woman has a right to go into a saloon and get a drink the same as a man, the saloonkeeper has a right to sell her that drink, and any municipal ordinance which deprives him of that right is an invasion of his civil rights and of his property rights to conduct a lawful business, because it would be lawful to sell the liquor to the woman, and to deprive him of that right, and thereby destroy his business, is a taking of property without due process of law, and an ordinance which subjects him to fine and imprisonment is unconstitutional and void.

There is no question involved in this case as to the effect upon the public morals of employing women in saloons and the serving of liquors by them. Nothing of that kind is charged in this case, nor is there any question raised in this case as to the sale of liquors within the hours prohibited by the ordinances or on Sunday. The charge is for selling liquor to women during the hours which by the ordinance the defendant was allowed to sell to men. None of the pernicious consequences which are supposed to follow from the employment of women in saloons necessarily follow from the
98 sale under the circumstances charged in this case, and the reasons which would authorize the portion of the ordinances which prohibits the employment of women do not support the conclusion of the court below that the portion of the ordinances here involved is a valid exercise of the police power and justified on the ground of public morality. The sale of liquor being permitted in this State, the business of selling, except so far as restrictions are placed upon it by law, is upon the same plane as any other business, and the parties engaged in it have the same rights as if they were engaged in some other business.

The right of a person to engage in any business permitted by law is a substantial right guaranteed to him by the Constitution of the United States. In Yick Wo *vs.* Hopkins, 118 U. S., 356, the peti-

tioner, Yick Wo, had been convicted of violating an ordinance of the city of San Francisco which made it unlawful for any person to carry on a laundry within the city limits without having first obtained the consent of the board of supervisors, except that the same be located in a building constructed of either brick or stone. Yick Wo having been convicted brought *habeas corpus* proceedings in the circuit court of the United States, alleging that the ordinance was unconstitutional. The circuit judge refused to discharge him in deference to the supreme court of California upon the question, *and the case* was taken to the Supreme Court of the United States. It appeared that the ordinance as enforced had the effect of prohibiting Chinamen from carrying on a laundry business, inasmuch as their laundries were all carried on in wooden buildings,
99 and the board of supervisors uniformly refused to give them permission without regard to the condition of their premises. The Supreme Court held that the ordinance in question was contrary to the Constitution of the United States and invalid. In the opinion it is said:

"The ordinance drawn in question in the present case is of a very different character. It does not prescribe a rule and conditions for the regulation and use of property for laundry purposes, to which all similarly situated may conform. It allows without restriction the use for such purposes of buildings of brick or stone, but, as to wooden buildings, constituting nearly all those in previous use, it divides the owners or occupiers into two classes, not having respect to their personal character and qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from whom that consent is withheld, at their mere will and pleasure. And both classes are alike only in this: that they are tenants at will, under the supervisors, of their means of living. The ordinance, therefore, also differs from the not unusual case, where discretion is lodged by law in public officers or bodies to grant or withhold licenses to keep taverns, or places for the sale of
100 spirituous liquors, and the like, when one of the conditions is that the applicant shall be a fit person for the exercise of the privilege, because in such cases the fact of fitness is submitted to the judgment of the officer, and calls for the exercise of a discretion of a judicial nature."

This decision establishes the principle that an ordinance which discriminates against a particular race or class of persons, or which can be so enforced as to discriminate against a particular race or class is invalid. For the same reason an ordinance which discriminates against a person on account of sex without good reason is invalid.

This court recently decided, *In re* Morgan, 26 Colo., 415, that a statute which limited the right of certain classes of persons to work

more than eight hours per day was invalid because infringing the right of persons to contract in regard to their labor.

A statute of Illinois which prohibited the employment of females in manufacturing establishments for more than eight hours per day was held invalid by the supreme court of that State.

Ritchie *vs.* People, 155 Ill., 98.

In the opinion it is said:

"It is not the nature of the things done, but the sex of the persons doing them, which is made the basis of the claim that the act is a measure for the promotion of the public health. It is sought to sustain the act as an exercise of the police power upon the
101 alleged ground, that it is designed to protect woman on account of her sex and physique. It will not be denied, that woman is entitled to the same rights, under the Constitution, to make contracts with reference to her labor as are secured thereby to men. The first section of the fourteenth amendment to the Constitution of the United States provides: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive *any person* of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.' It has been held that a woman is both a 'citizen' and a 'person' within the meaning of this section. (*Minor vs. Happersett*, 21 Wall., 162.) The privileges and immunities here referred to are, in general, 'protection by the Government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole.' (*Slaughter House Cases*, 16 Wall., 36.) As a citizen, woman has the right to acquire and possess property of every kind. As a 'person,' she has the right to claim the benefit of the constitutional provision that she shall not be deprived of life, liberty or property without due process of law. Involved in these rights thus guaranteed to her is the right to
102 make and enforce contracts. The law accords to her, as to every other citizen, the natural right to gain a livelihood by intelligence, honesty and industry in the arts, the sciences, the professions or other vocations. Before the law, her right to a choice of vocations can not be said to be denied or abridged on account of sex. (*In re Leach*, 134 Ind., 665.)

"The tendency of legislation in this State has been to recognize the rights of woman in the particulars here specified. The act of 1867, as above quoted, by the use of the words, 'he or she,' plainly declares that no woman shall be prevented by anything therein contained from working as many hours overtime or extra hours as she may agree; and thereby recognizes her right to contract for more than eight hours of work in one day. An act approved March 22, 1872, entitled 'An act to secure freedom in the selection of an occupation,' etc., provides that 'no person shall be precluded or debarred from any occupation, profession or employment (except military) on ac-

count of sex.' (1 Starr & Cur. Stat., page 1056.) The married woman's act of 1874 authorizes a married woman to sue and be sued without joining her husband, and provides that contracts may be made and liabilities incurred by her and enforced against her to the same extent and in the same manner as if she were unmarried, and that she may receive, use and possess her own earnings, and sue for
the same in her own name, free from the interference of her
103 husband, or his creditors. (Rev. Stat. Ill., chapter 68, sections 1, 6 and 7.)

"Section 5 of the act of 1893 is broad enough to include married women and adult single women, as well as minors. As a general thing, it is the province of the legislature to determine what regulations are necessary to protect the public health and secure the public safety and welfare. But inasmuch as sex is no bar, under the constitution and the law, to the endowment of woman with the fundamental and inalienable rights of liberty and property which include the right to make her own contracts, the mere fact of sex will not justify the legislature in putting forth the police power of the State for the purpose of limiting her exercise of those rights, unless the courts are able to see that there is some fair, just and reasonable connection between such limitation and the public health, safety and welfare proposed to be secured by it."

The right of the saloonkeeper to sell liquor is a property right just as much as the right of the manufacturer to employ labor, and the right of a woman to contract for the purchase of liquor is as much a right given her by the constitution and statutes of this State as the right to contract for her labor.

If she has a right to purchase liquor she has a right 'o go where the liquor is sold and the same right to purchase and drink it that a man has. It is within the province of legislature or city council to
regulate the business of liquor selling and to prohibit sales
104 altogether to such an extent as may be necessary in the opinion of the law-making body to subserve the best interests of the State or municipality, but all such regulations must operate equally upon all persons under like conditions. If wine rooms are a detriment to society they should be abolished altogether, and their use not confined to a particular portion of society, or statutes or ordinances might be enacted or adopted providing safeguards against the dangers which are supposed to result from the carrying on of wine rooms in connection with saloons, which regulations would operate equally upon all persons frequenting said rooms without regard to sex. But this ordinance does not come within the powers of the legislature or city council in that regard because it operates unequally and does not purport to regulate the sale of liquor in wine rooms or the method of carrying on wine rooms, but entirely prohibits the presence of certain persons in wine rooms and saloons on the ground of sex alone, upon which, in the light of the foregoing authority, such a discrimination is contrary to the constitutional provisions.

In order that an ordinance that discriminates against women in

this regard may be upheld it must appear that there is some fair, just and reasonable connection between such limitations and the public health, safety and welfare proposed to be secured by it.

Nor does the right of the city council to pass ordinances regulating the liquor traffic give it any right to arbitrarily discriminate against particular persons in the conduct of that business.

In the case of City of Chicago *vs.* Netcher, 183 Ill., 104, 55
105 N. E., 709, an ordinance which prohibited the sale of intoxicating, malt or fermented liquors in any place of business in the city of Chicago wherein dry goods, clothing, jewelry or hardware were kept for sale was held invalid. In the opinion, speaking of the business of liquor selling, it is said:

"Police regulation of that business has always been sustained, as having for its object the prevention of intemperance, pauperism, and crime, and diminishing, as far as practicable, the injurious consequences to the public resulting from the business. In Schwuchow *vs.* City of Chicago, 68 Ill., 444, it was said: 'This business is, on principle, within the police power of the State, and restrictions which may rightfully be imposed upon it might be obnoxious as an illegal restraint of trade when applied to other pursuits.' It is clearly within the police power to prohibit all sales of liquor on the ground that 'dram drinking is an evil to the person, and pernicious to the welfare of the public.' Dennehy *vs.* City of Chicago, 120 Ill., 627, 12 N. E., 227. The city may also form prohibition districts for the protection of particular neighborhoods from the influence of dram shops, wherever it is desirable or reasonable that there should be such prohibition, although the sale may be licensed in other parts of the city. People *vs.* Cregier, 138 Ill., 401, 28 N. E., 812. This ordinance, however, is not an exercise of the police power for the protection of the public from the injurious effects of the liquor business. It is not
106 aimed at the suppression of the business, either in certain localities or upon any ground of police regulation, but is directed solely against the sale by certain persons in their places of business; that is, by those who also sell dry goods, clothing, jewelry or hardware. The city of Chicago has not seen fit to prohibit the sale of liquor, either generally or in the district of the city where defendant's store is kept. It has established its policy with reference to that business, and defendant has complied with its ordinances, so as to be entitled to sell liquor in his store, unless this ordinance constitutes a valid prohibition against his doing so. It is apparent that, if there is any evil in permitting a sealed bottle of liquor to be sold from a store where dry goods, clothing, jewelry, or hardware are sold, the same evils would result from the sale from any other kind of a store. The ordinance permits the dealer in all kinds of merchandise, except dry goods, clothing, jewelry, and hardware, to sell liquor from his store, and the city can not arbitrarily discriminate against the defendant without any basis or ground for the discrimination. Special privileges are not to be granted to favored persons in the liquor business any more than in any other business. Zanone *vs.* Mound City, 103 Ill., 552. There are other clerks employed in

the other departments of defendant's store, separate and in-
107 dependent from this, but there was no liquor drunk on the premises, and none sold there for that purpose; so that the ordinance could not have been intended to prevent making a drinking place where clerks are employed in other lines of business. The restriction is purely arbitrary, not having any connection with, and not tending in any way towards the protection of, the public against the evils arising from the sale of intoxicating liquor."

This decision shows that there is no different rule to be applied to ordinances concerning the liquor business, when the business is not prohibited by law, and other lines of business. An ordinance, therefore, which unjustly discriminates, as the ordinance in question does, as to the persons to whom sales may be made, is invalid.

For these reasons we submit that the judgment of the court below was erroneous.

Respectfully submitted,

T. J. O'DONNELL AND
MILTON SMITH,
Attorneys for Plaintiff in Error.

108 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error.
} No. 4389. Error to the County Court of Arapahoe County.

Brief and Argument for Defendant in Error.

H. M. Orahood, H. L. Ritter, N. B. Bachtell, attorneys for defendant in error.

109 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error.
} No. 4389. Error to the County Court of Arapahoe County.

Brief and Argument for Defendant in Error.

This case involves the validity of certain sections of the liquor ordinance of the city of Denver, as stated in argument and brief for plaintiff in error, the sections of the ordinance being set out in the abstract of record herein, the same being sections 745 and 746
110 of article 15 of ordinance No. 101, of the series of 1898, entitled "Liquor saloons, dram shops and tippling houses."

Has the appellee any property right to sell to women?

The rights of citizens may be classified as natural or inherent, and acquired. The former are independent of constitutions, and statutes and ordinances; they came with man and will die with him.

No laws can destroy them. In the light of these rights, are all constitutions, statutes and ordinances constructed and interpreted.

The latter, acquired rights, are such as are granted and conferred by some legal enactment. They are rights based on a statute, and are no broader nor stronger than the statutes creating them. Without the statute they do not exist. He who claims them can not go back of the statute, but must stand or fall upon its terms and conditions.

The right to sell intoxicating liquors is not a natural and inherent right, but an acquired right. Without statutory enactment giving the right to sell, no one could sell it without committing a nuisance. The right being based upon and derived from the law, it follows that the extent to which it may be sold, the manner of sale, to whom sold, etc., are also to be derived from statute.

The Supreme Court of the United States, in Crowley *vs.* Christenson, 137 U. S., 86, says:

"There is no inherent right in a citizen to sell intoxicating
111 liquors by retail. It is not a privilege of a citizen of the State or of a citizen of the United States," and in the argument of the court sustaining its view it says: "By the general concurrence of opinion of every civilized and Christian community there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors in small quantities to be drunk at the same time are sold indiscriminately to all parties applying."

We need quote no other authorities in support of our proposition, for no higher or better could be cited.

The appellee has, therefore, only such a right to sell intoxicating liquors as is conferred by the statutes of the State, and the ordinances of the city enacted pursuant to the same. These define his rights—prescribe limitations, and when he sells, he sells subject to all the restrictions and limitations they prescribe. His property rights rest solely and only there, and he can claim no greater right than it carved out to him. Let us, then, proceed to ascertain what his rights are, by an examination of the legislative enactment, the provisions of the charter of the city of Denver, and the ordinances by the city council.

Provisions of the Charter of the City of Denver in Reference to Liquor Saloons, Dram Shops, and Tippling Houses.

Section 20, of article 2, chapter 1, subdivision 12, of the charter provides in substance that the city council shall have ex-
112 clusive power to provide for licensing, taxing and regulating all tippling houses, dram shops and liquor saloons and the selling and giving away of any intoxicating or malt liquors by any person within the city.

Subdivision 1 of said subdivision 12 provides that all such licenses shall be granted by the fire and police board only, and on petition

of a majority of the owners of the real estate within the frontage of the block.

Second. That no liquor saloon, dram shop or tippling house shall be kept open on Sunday, and no license shall be granted with power to keep open on Sunday, and all of the laws of the State concerning Sunday closing shall be in force in the city.

Fifth. Provides as follows, to wit:

"That no liquor saloon, dram shop or tippling house shall have or keep, in connection with or as a part of such saloon, tippling house or dram shop, any wine room or other place, either with or without doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such tippling house or dram shop, and there be supplied with any kind of liquor whatsoever."

Subdivision 13 of said section 20 empowers the city council to prohibit and suppress dance houses, tippling houses, dram shops, etc.

Section 77, of article 3, of chapter 1, of the charter provides in substance that the fire and police board shall have full, com-
113 plete and exclusive authority to grant, refuse and revoke licenses for and to regulate tippling houses and dram shops, and the selling or giving away of intoxicating or malt liquors to any person or persons in the city, in such manner as may be authorized by ordinance; and section 78 of said article gives the board power to revoke any license given for any tippling house, liquor saloon or dram shop whenever, in the judgment of the board, such action may be necessary to the peace and good order of the city.

The right to sell liquor being, therefore, an acquired right, and based upon legislative sanction and restrictions, can not be extended in this State and city to include any right whatever to sell to women, and the appellee can not be heard to say he is possessed of such right, and is deprived thereof by the ordinances of the city in question, and the action of the police authorities of the city of Denver, for the reason that he never had any such right.

It will be observed, therefore, that the exclusive power is vested in the city council to license, tax and regulate tippling houses and dram shops and the selling and giving away of intoxicating and malt liquors as in their judgment shall be to the best interests of the city. The power is also given the council in subdivision 13, *supra*, to prohibit and suppress this class of business. The discretion is, therefore, vested in the council to either provide for the licensing and regulating of such places, or if, in their judgment they see fit, the power is given to entirely prohibit and suppress such business.

If they tax and regulate it, then all the laws of the State in refer-
ence to Sunday closing are in force and must be observed by
114 the licensee, and, in addition to this, no ordinance can be enacted unless the restrictions provided in said subdivision 5 of subdivision 12 are embodied in the provisions of the ordinance in reference to wine rooms and the admission of females into such

wine rooms for the purpose of their being supplied with intoxicating liquors.

Under and by virtue of these provisions of the charter of the city, the council has, by ordinance, exercised its power to regulate dram shops, tippling houses, saloons, and the selling and giving away of intoxicating liquors in the city. They have not proceeded under the power given in said subdivision 13, but have passed the ordinance under the power granted them in said subdivision 12, in so far as to provide against wine rooms and the admission of females thereto. They have not seen fit to suppress the liquor traffic in all its various forms. They have provided that the traffic may be carried on under certain regulations, and, impliedly, have prohibited and suppressed it when attempted to be carried on in any other way or manner.

In section 745 of the ordinance in controversy the city council observed the provisions of the city charter in reference to wine rooms, and has embodied the language of the charter in said section of the ordinance.

They have gone one step further, and said, in section 746 of the ordinance, that females shall not be allowed in and about any liquor saloon, dram shop or tippling house or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto or connected therewith in any manner whatsoever, for the purpose of there being supplied with liquor, nor shall it be lawful to employ or procure any female person to wait or in any manner attend on any person in any such place. This amounts to a suppression or prohibition of the traffic in a place where women are allowed to be for the purpose of being supplied with liquor or employed in waiting or attending customers in such places.

We think we are correct in saying that the question at issue in this case does not involve the constitutionality, as counsel contend, of the provisions of the ordinance in controversy, but involves the constitutionality, if a constitutional question enters into the case at all, of the provisions of the charter of the city of Denver, as enacted by the legislature of the State, for the reason that the ordinance is enacted under the specific powers granted by the charter, and not under the implied powers.

Counsel seems to raise no question on the constitutionality of the charter or the validity of its provisions, but directs his contention against the constitutionality of the provisions of the ordinance as contained in the two sections. It would certainly be an anomaly to hold the charter provisions in this regard constitutional and to declare the ordinance provisions unconstitutional, for, if the charter is constitutional, then certainly the provisions of the ordinance must also be constitutional, for the ordinance is practically in the precise language of the charter. We will, therefore, contend that the question for this court to determine is the validity or constitutionality of the charter provisions; the power of the legislature to regulate the traffic in intoxicating liquors.

116 *Constitutionality of the Charter Provisions.*

Counsel for the plaintiff in error makes no distinction between the ordinary, lawful business which all persons have an inalienable right to engage in and pursue under the Federal and State Constitutions, and that class of business which it is held should be only permitted to be carried on and pursued under regulations and restrictions, in order that it may not have a pernicious effect upon the morals of the people, and become, when carried on by the vicious, destructive to the welfare of the community. In other words, he makes no distinction between the natural and inherent rights of the citizen and the acquired rights.

We will endeavor to show, first, that the liquor traffic is held by the highest courts of our country to be of that class of business not within the provisions of the State and Federal Constitutions relied upon by counsel for plaintiff in error.

All statutes regulating or prohibiting the manufacture or sale of intoxicating liquors are enacted by virtue of what is termed the police power of the State, and in every case in which their validity has been sustained, as against objections to the legislative authority under either the State or Federal Constitutions, it has been on the ground that such regulations come rightly within the scope of this power.

As we understand the police power, it is that branch of the governmental machinery which is charged with the preservation of public order, promotion of the public health, safety and morals, and the prevention and punishment of crimes.

117 It is said in the License cases by the Supreme Court of the United States that "it is a power essential to self preservation, and exists, necessarily, in every organized community; it is, indeed, the law of nature and is possessed by man in his individual capacity."

License Cases, 5 Howard, 588.

The regulation of the manufacture or sale of intoxicating liquors has at all times been considered a proper subject for the exercise of the police power, for it is admitted that an unregulated and unrestricted traffic in liquor threatens the public safety by generating vice, crime and immorality, and imperils the peace and good order of the community, and is destructive of the public prosperity by its contributions to pauperism.

In the License cases, *supra*, Justice Taney uses this language:

"If any State deems the retail and internal traffic in ardent spirits injurious to its citizens and calculated to produce idleness, vice or debauchery, I see nothing in the Constitution of the United States to prevent it from regulating and restraining the traffic, or from prohibiting it altogether, if it thinks proper. * * * Upon that subject each State must decide for itself."

Justice Grier, in the same case, uses the following language, speaking of the power of the State to control and regulate the liquor traffic:

118 "Without attempting to define what are the peculiar subjects or limits of this power (police power) it may safely be affirmed that every law for the restraint and punishment of crime, for the preservation of the public peace, health and morals, must come within this category. As subjects of legislation, they are, from their very nature, of primary importance; they lie at the foundation of social existence. * * * It is not necessary, for the sake of justifying the State legislation now under consideration, to array the appalling statistics of misery, pauperism and crime which have their origin in the use or abuse of ardent spirits. The police power which is exclusively in the States is alone competent to the correction of these great evils, and all measures of restraint or prohibition necessary to effect the purpose are within the scope of that authority. There is no conflict of power or of legislation as between the States and the United States."

Again, the United States Supreme Court, in the Bartemeyers case, Judge Bradley delivering the opinion of the court, distinguishes between the invasion of the right of the citizen to pursue his lawful calling, and the claim of right to pursue an unlawful calling, which stand on very different grounds, occupying the same platform as does a claim of right to disregard license laws and to usurp public franchises. Mr. Justice Field, concurring in the opinion in this case, says:

119 "The prohibition of sale in any way or for any use is quite a different thing from the regulation of the sale or use so as to protect the health or morals of the community. All property, even the most harmless in its nature, is equally subject to the power of the State in this respect, with the most noxious. No one has ever pretended, that I am aware of, that the fourteenth amendment interferes in any respect with the police power of the State."

Bartemeyers *vs.* Iowa, 18 Wallace, 129.

Still later the Supreme Court in McGahey *vs.* Virginia, says, by Mr. Justice Bradley, delivering the opinion of the court:

"Licenses for the sale of intoxicating liquors are not only imposed for the purpose of raising a revenue, but also for the purpose of regulating the traffic in, and consumption of, these articles, and hence the State may impose such conditions for conducting such traffic as it may deem most for the public good * * * It would be very different if the business to be followed was one of the ordinary pursuits of life, in which all persons are entitled to engage."

McGahey *vs.* Virginia, 135 U. S., 662.

We see in both of these cases that a distinction is made between the business of manufacturing or selling liquors, and the ordinary pursuits of life; a distinction between natural and inherent rights

and acquired rights; a distinction which counsel for plaintiff
120 in error has failed to make in his argument, and therefore the cases which he has cited in support of his contention lay down the doctrine that no discrimination can be made against a citizen's right to follow an ordinary pursuit of life; they, therefore, cannot be considered in point when considering the right of a citizen to pursue the business of dispensing intoxicating liquors, which, as before stated, is an acquired right.

In Beer Company *vs.* Massachusetts, the court says:

"Whatever difference of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens, and to the preservation of good order and the public morals. The legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, *salus populi suprema lex;* and they are to be attained and provided for by such appropriate means as the legislative discretion may devise.

Beer Co. *vs.* Massachusetts, 97 U. S., 33.

Finally we come to the case of Mugler *vs.* Kansas, which may now be considered a final decision of the rights of the States to
121 control their internal affairs under the police power, free and unrestricted by the Federal Constitution.

Counsel for plaintiff in error cites this case and quotes the only part of the decision that has no bearing upon the issue herein. The decision in all its parts is as conclusively against the contention of the plaintiff in error in this case as any case that can be produced from the innumerable decisions upon this subject. To appreciate the reasoning and doctrine of this great case it is necessary to read it as an entirety. We desire, however, to direct the court's attention to particular portions of it, and will make short quotations therefrom for that purpose. Justice Harlan, delivering the opinion of the court in part says:

"As was said in Munn *vs.* Illinois, 94 U. S., 124, while power does not exist with the whole people to control rights that are purely and exclusively private, Government may require each citizen to so conduct himself, and so use his own property, as not, unnecessarily, to injure another. But by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker, will injuriously affect the public? Power to determine such questions, so as to bind all, must exist somewhere; else society will be at the mercy of the few, who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the
122 many, provided only they are permitted to do as they please. Under our system that power is lodged with the legislative branch of the Government. It belongs to that department to exert

what are known as the police powers of the State, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

Mugler *vs.* Kansas, 123 U. S., 623.

At this point of the opinion counsel for plaintiff in error quotes, on pages 7 and 8 of his brief, which is simply a principle which the learned court says must be kept in mind in passing upon the power lodged with the legislative branch of the Government to exercise the police power. Taking up the decision where counsel for plaintiff in error leaves off, the learned court says:

"Keeping in view these principles, as governing the relations of the judicial and legislative departments of Government with each other, it is difficult to perceive any ground for the judiciary to declare that the prohibition by Kansas of the manufacture or sale, within her limits, of intoxicating liquors for general use there as a beverage, is not fairly adapted to the end of protecting the community against the evils which confessedly result from the excessive use of ardent spirits. There is no justification for holding that the State, under the guise merely of police regulations, is here
123 aiming to deprive the citizen of his constitutional rights; for we cannot shut out of view the fact, within the knowledge of all, that the public health, the public morals and the public safety, may be endangered by the general use of intoxicating drinks; nor the fact, established by statistics accessible to every one, that the idleness, disorder, pauperism and crime existing in the country, are, in some degree, at least, traceable to this evil."

The supreme court of Vermont says:

"If it be once granted that the use of intoxicating liquor as a drink is worse than useless, and intemperance a legitimate consequence of such use, and that intemperance is an evil, injurious to health and sound morals, and productive of pauperism and crime, it seems to us that a law designed to prevent such consequences must particularly fall within the class of laws denominated police regulations."

Lincoln *vs.* Smith, 27 Vermont, 328.

In an early New York case it was said:

"It is a bold assertion to declare at this day that there is anything in the State or United States Constitutions conflicting with or setting bounds upon the legislative discretion or action in directing how, when and where a trade shall be conducted in articles immediately connected with the public morals, public safety, or
124 public prosperity, or, indeed, to prohibit and suppress such traffic altogether, if deemed essential to effect those great ends of good government."

Metropolitan Board of Excise *vs.* Barrie, 34 N. Y., 657.

In the face of the later decisions, which we have referred to herein, by the Supreme Court of the United States, it seems to us

that it passes beyond a proposition of boldness in counsel for plaintiff in error to assert that there is anything conflicting in the constitutions of the State or nation with the provisions of our charter; we think that such a declaration at this late day assumes a position of malicious disregard to the rights and time of this honorable court in presenting such a well-settled and elementary proposition. The business is, on principle, within the police power of the State, and restrictions may rightfully be imposed upon it which might be obnoxious as a legal restraint of trade or business, if applied to other pursuits. It would be easy to multiply authorities in support of the position we take in this matter, but the question has long since been a well-settled proposition in our jurisprudence and is no longer open to controversy. In so far as the provisions of the charter are permissible under the Federal Constitution, we confidently leave the subject with the court, and will now briefly notice if the contention of the plaintiff in error is any better founded in law, wherein he questions the provisions of the charter and ordinances under the constitution of this State.

125 Charter and ordinance provisions do not conflict with State constitution.

The constitutional provisions cited by counsel for plaintiff in error are as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

First Mills, page 51.

"SECTION 276. That all persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property and of seeking and obtaining their safety and happiness."

1 Mills, 145.

SECTION 423 OF MILLS: "That all citizens of this State, regardless of race, color or previous condition of servitude, shall be entitled to full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, churches, barber shops, public conveyances, theaters and other places of public resort or amusement."

126 The other provision of the constitution referred to by counsel for plaintiff in error is that in reference to the enfranchisement of women. Counsel also refers to certain sections of the State statutes of Colorado in reference to the sale of liquors, on page 12 of his brief, and makes the assertion that there is no prohibition of the sale of liquor to women in the laws of the State of Colorado, and

that the legislature could not have enacted a valid law of that character. Upon the first proposition, that there is no prohibition of the sale of liquor to women, we agree with counsel. As to whether we agree with him on the second proposition, it is not necessary in this controversy to state. The question involved is not the right of a woman to buy liquor, but the right of a person licensed under the laws of this State to sell liquor to a woman in a particular place. The only restrictions under the ordinance and charter in reference to the sale of liquor to women are, that a saloon keeper shall not permit her to be in a wine room for the purpose of there being supplied with liquor or in and about the saloon for that purpose. There is no doubt the saloon keeper may sell intoxicating liquor to a woman, providing it is not furnished to her on his premises to there be drunk; we, therefore, contend that there is nothing in the charter in conflict with the general laws of the State, and if there were it would not be material, for the reason that the charter is one of the general laws of the State.

What, then, is there in the constitutional provisions in conflict with the police regulations in reference to the sale of intoxicating drinks?

The constitution of this State is no more restricting in its
127 provisions, on the acts of the legislature, than are the provisions of the Federal Constitution; both constitutions refer to the natural and inherent rights of the citizen; the same authorities cited, *supra*, are in point, when considered in connection with the provisions of our State constitution. But in order to call the court's attention to authorities from other States upon this question, where the same constitutional provisions were involved, we will quote briefly from several authorities. Inasmuch, however, as this case will be heard in connection with case No. 4392, and our brief in that case discusses the same proposition, we will not reiterate what was there said by counsel writing that brief for the appellants.

It will be noticed that counsel for plaintiff in error cite but one case in support of their contention that the provisions of the charter and ordinance in controversy are in conflict with the constitution of the State. That is the case of *In re* McGuire, 57 California, 604. The constitution of the State of California contains this provision:

"No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession."

Counsel claim that this provision is no broader than those of the State of Colorado; we may submit that this is true for the sake of argument, but where counsel errs, in our opinion, is in assuming that that case decides that the ordinance was in conflict with the constitutional provisions, because it in any manner forbid the sale of liquor to women in a wine room or in and about a saloon. We
have shown in the brief filed in case 4392, *supra*, that this
128 decision was by a divided court, three judges deciding that it was in conflict and three judges holding that it was not in conflict with the constitutional provisions, but one of the latter three agreeing with the other three in their conclusions that it was uncon-

stitutional, but for the reason that it discriminated between persons having the right to be employed in a saloon, the ordinance permitting the proprietor's family or female relatives to be employed in the saloon, but barring all other females. However that case may be considered, as for or against our contention, the supreme court of California in a later case hold squarely with our contention in this case.

In *Ex parte* Hayes, 33 Pac. Rep., 337 (98 Cal., 555), decided in 1893, the question here presented was, namely, as to whether or not an ordinance making it unlawful to sell intoxicating liquors in dance houses, or other places where females attended as waitresses, was such a discrimination against women in the matter of employment as would bring it in conflict with the identical section of the ordinance referred to in the McGuire case. The court said, after referring to the constitutional provision above quoted:

"This section would, in our opinion, operate as a limitation of the power of the State or its municipalities to prescribe the conditions upon which the business of retailing intoxicating liquors shall be permitted to be carried on, or in regulating the manner in which such business shall be conducted."

Again, the same question was before the supreme court of
129 California in 1894, in the case of Foster *vs.* Board of Police Commissioners, 37 Pacific Reporter, 763 (102 Cal., 483). In that case the court says:

"The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at those retail liquor saloons than to any other source. The sale of such liquors has, therefore, been at all times, by the courts of every State, considered as the proper subject of legislative regulation. There is no inherent right in a citizen thus to sell intoxicating liquors by retail."

Citing

Cooley, Constitutional Limitations, 6th ed., page 342.

"It is also insisted that the ordinance under consideration is objectionable for want of uniformity, and that it discriminates between different persons. That it affects all persons of a certain class without discrimination, and as to them acts uniformly, cannot be questioned. The question, however, is as to the power to discriminate at all. The power thus to discriminate is well settled by the authorities hereinbefore cited and by many others. This power is exercised in relation to many other occupations besides that of selling liquor and when promotive of the best interests of the people is always sustained."

130 The same question was before the supreme court of the State of Montana under a provision of the constitution of that State. The court says:

"Petitioner's counsel urge the proposition that the provisions of that statute are unconstitutional, because, in effect, it prohibits a certain class, *i. e.*, women, from being employed in a place where

intoxicating liquors are sold, and, therefore, restrains such persons from engaging in a lawful business. This statute does not forbid the employment of women or minors, but it does prohibit all persons from selling liquors in a place where women and minors are employed or assembled for the purpose of business. There seems to be wisdom and propriety in this provision as a police regulation, and we fail to find in it the infringement of any provision of our constitution."

Again, the question was presented to the supreme court of Ohio in Bergman *vs.* Cleveland, 39 Ohio State Reports, 651; the constitution of that State had provisions almost identical with those here under consideration, and were held not an unconstitutional discrimination against women, and held that it did not violate any part of the constitution of the State, or of the United States, but was a wise regulation, properly, legally and justly made for the good order and morality of the community.

We call the attention of the court to the language of Justice
131 Wilson, of our own court of appeals, in City of Denver *vs.* Domedian, 1 Mills' Anno. Dec., 450, on motion for rehearing these identical sections of this ordinance being under consideration. The justice says in part:

"We agree that the ordinance is a good one, and its objects are most praiseworthy, and that its rigid enforcement would meet with the approval of every good citizen."

We have now cited all the decisions upon this proposition that we have been able to find considering directly provisions of the constitution, such as are contained in the constitution of this State; without a dissenting voice they hold such provisions do not conflict with the constitution, but are wise regulations, enacted for the best interests and to promote the general welfare of the community.

As was said in the case of Foster *vs.* Board of Police Commissioners, *supra*, "there is no inherent right in a citizen to sell intoxicating liquors by retail." So it was stated also in Mugler *vs.* State of Kansas, *supra*, "that so far as such a right exists, it is not one of the rights growing out of citizenship of the United States."

We therefore challenge counsel to produce one authority sustaining their contention. The courts, both State and national, stand as an unbroken line in favor of the provisions of the legislative enactments looking to the promotion of the general welfare of the whole people, and the protection of females against the vicious passion of those who engage in that business.

There is one more provision of the constitution counsel for
132 plaintiff in error would have the court believe has something to do with the rights of a woman to debauch herself if she sees fit. In fact counsel claims all through his brief that a woman has a right to drink whiskey in wine rooms, or at a public bar, the same as a man, and has a constitutional right so to do, and that the legislature had no power to deny her the right to seek her happiness in this way. If a woman has a constitutional right to seek her enjoyment and happiness at a public bar, with vicious and passionate

men, who, to a large extent, frequent those places and loiter therein, or in the private confines of the wine rooms connected therewith, then she has a constitutional right to go one step further and to seek her happiness and enjoyment in the house of prostitution, and there is no power in the legislature to protect the morality of the community by prohibiting or suppressing such houses. If the legislature has no power to say that a woman shall not pursue that course in life which will inevitably lead her, almost without exception, into a life of debauchery and prostitution, then the legislature should have no power to prohibit her from leading that life in debauchery and prostitution, which her alleged constitutional right has led her into.

It is undoubtedly true that the legislature has no power to pass a law which, in its effect, would restrain a woman from leading a life of shame; that is to say, if she was inclined to that sort of life, she would seek it and follow it regardless of the law; the law would be ineffective to check her inclinations and hold her in a life of decency and virtue, but the legislature has the power to say that avenues through which nine-tenths of women pass in their downward
133 course, shall be closed, and shall not be open gates, inviting them into a course which can only end in debauchery and shame, and by so closing those avenues and forbidding women to enter therein, and thus restraining them from coming in contact with vicious and passionate men, whose only desire is to lead them on a downward course, the legislature does at least take a course that must be approved by all high minded and reputable citizens.

For counsel to claim that the law of this State, which opened the ballot box to women, opened also to her the door to the saloon and brothel, and gave her the constitutional right, not only to vote, but to become a disgrace and a shame to the name of woman, and the constitutional right to make her person a "whited sepulcher filled with dead men's bones," is an astounding proposition, coming from as learned counsel as appear in this case for plaintiff in error.

We submit, that in the name of justice, decency and right, the provisions of the charter and the ordinances of this city, in controversy herein, should be sustained, and the decision of the county court be affirmed.

Respectfully submitted,

H. M. ORAHOOD,
H. L. RITTER,
N. B. BACHTELL,
Attorneys for Defendant in Error.

134 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error.
} No. 4389. Error to the County Court of Arapahoe County.

Reply Brief for Plaintiff in Error.

T. J. O'Donnell, Milton Smith, attorneys for plaintiff in error.

135 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error.
} No. 4389. Error to the County Court of Arapahoe County.

Reply Brief for Plaintiff in Error.

The position taken by counsel for defendant in error in their brief is practically that a person may not engage in the saloon business for the sale of liquors at retail unless permitted to do so by some statute; that in the firs instance, before there were statutes on the subject, a person had no right to sell liquor at retail;
136 in other words, that the right to sell liquor must be granted.

Assuming, then, that the sale of liquor was not permissible except where the statute says it may be sold, the defendant in error proceeds to say that the police power may be exercised in any way that the legislature sees fit; that is to say, that the legislature may discriminate against one class of persons and in favor of another; that it has no limitations nor restrictions placed upon it by constitutional provisions; in short, that the legislature can treat the question as it sees fit, for the reason that there is, as counsel for defendant in error says, no *inherent right* to sell liquor at retail. This position is absurd. In the first place, the right to sell liquor at retail is not an *acquired* right, as counsel call it, and they will not find any statute or any ordinance or any charter in any book granting the right to sell liquor at retail. The statutes and the ordinances are prohibitory or restrictive in their nature. No prohibition or temperance orator or statesman will be found to say that the right to prohibit the sale of liquor at retail exists in any other manner than some statute so prohibiting its sale. If the position of counsel for defendant in error is correct, the prohibition party should endeavor to have all statutes relating to the liquor traffic wiped off of the books and then there would be absolute prohibition. The fact is that before prohibitory or restrictive statutes were enacted affecting the sale of liquor at wholesale, retail or in any other way, any person had the right to sell liquor at any time and to any per-

son, and it is only by reason of these statutes that the sale of liquor has in any way been restricted.

Counsel cite the case of Crowley *vs.* Christenson, 137 U. S.,
137 86, and quote from Mr. Justice Field as being an authority for the proposition that the sale of liquor at retail is an *acquired* right. The only thing that that decision holds is that, assuming that we have these statutes, and that we have prohibitory or restrictive legislation upon the subject, then when a man embarks in the liquor business he has no inherent right to sell *contrary to and in violation of those laws*, or having been engaged in the business he has no inherent right to continue in it after the enactment of the prohibitory or restrictive statute unless he complies with the statute. When the foundation or pedestal upon which the brilliant argument of counsel for defendant in error rests is thus disposed of, the whole thing falls, and by sinking in the quicksands is lost sight of. The proposition advanced by them is that the legislature, under the exercise of the police power, may discriminate against a class of citizens for the reason that the sale of liquor at retail is an acquired right. If it is not an acquired right in the sense in which counsel use that term, and the legislature need not act in order to enable one to sell liquor in the first instance, then the right existed irrespective of legislative enactment, and that right can be taken away, restricted or curtailed only in accordance with constitutional provisions upon the subject. The argument of counsel is, in effect and substance, that the police power is not affected, so far as it is exercised in relation to the liquor traffic, by constitutional provisions. It is an unheard-of contention. Not one of the authorities which have been cited by counsel are in point upon the proposition. The cases cited by counsel all go to the proposition that a State,
acting through its legislature, may restrict and regulate the
138 liquor traffic or prohibit it altogether. We have not disputed that proposition, but we do say that when the legislature undertakes to restrict or legislate as to the liquor traffic it must make that legislation in accordance with constitutional provisions so that it will not operate against or in favor of any class of citizens. Every authority which counsel for defendant in error have cited goes to the question whether or not the police power of the State may be exercised with reference to this question to regulate the liquor traffic. They quote from the case of Bartemeyers *vs.* Iowa, 18 Wallace, 129, the following:

"All property, even the most harmless in its nature, is equally subject to the power of the State in this respect, with the most noxious."

The converse of that proposition is true, viz.: that even property the most noxious in its nature is no more subject to the police power of the State than the most harmless. The police power may be exercised upon a class or species of property which does or could, from the very nature of it, do little injury to the public or to the community if it were necessary that such power should be exercised, and the power and the right to exercise the police power as to that

class of property is as full and complete as to apply it to the most noxious species of property. The power to restrict, restrain or prohibit the sale of liquor at retail exists in the same degree and to no greater extent than does the same power exist with reference to the question of whether or not a livery stable may be kept at any particular place in the city.

139 The brief of counsel for defendant in error is devoted to the proposition that the liquor traffic, being an acquired right, the legislature has the power and the authority to regulate it in anyway it sees fit to a greater extent or to any extent. Let us illustrate the proposition: As to a livery stable they would say that the exercise of the police power must be uniform, must operate upon all classes of citizens alike, must operate upon the different localities in the city alike, but for the reason that the keeping of the livery stable was an inherent right in the individual, and that that right can only be taken away by legislation by the exercise of the police power when it is done in a manner to affect all alike. But, on the other hand, they assert the legislature may say to a person engaged in the liquor traffic: "John Jones, you cannot sell liquor to women, but you can sell it to men. The reason why you cannot sell it to women is that the legislature may say you cannot, for the reason that in the first instance you had no right to sell it to either men or women, but the legislature has granted the right to you to sell it to men."

The very statement of itself is sufficient to show the fallacy of it. There was no such granting of right because in the first instance John Jones could and had the right to sell liquor to either men or women; he could sell it in wine rooms, or in the saloon proper, to both men and women, in the first instance, and it is only by reason of the statutes restrictive in their nature which says that a woman shall not be in a place where liquors are sold, that he cannot sell to women. And when you come to pass upon the legality of

140 these statutes where they so discriminate, you have a right to take into consideration the constitutional questions and that is what we are asking you to do. We are endeavoring to show to this court, not that the police power may not be exercised to regulate the liquor traffic at either wholesale or retail, but when it is attempted to be exercised it must be exercised so that it applies to all classes of citizens alike. But counsel say, where is the property right to sell liquor to women? They say that it is different from the right of a woman to purchase liquor. If a woman has the right to step into a saloon or wine room and get a drink of beer or whisky, under the Constitution of the State of Colorado and of the United States, that right must be accompanied with the further right on the part of the saloonkeeper to sell it. If the woman has the right to purchase, and the saloonkeeper has the right to sell, then he has a property right, not in the woman, but in the right to sell and dispose of his wares to any individual that comes along, whether male or female.

No one contends, as counsel say in the latter part of their brief,

that by reason of the fact that women were allowed the suffrage that they can engage in a life of debauchery or that they have any right to purchase and drink liquors. That statute was simply cited as showing the tendency of the laws of this State to place women upon an equality with men in all respects, and counsel know it. They appeal to this court from what they call a moral standpoint. They do not argue the constitutional questions involved, nor any question involved. We do not think it needs a constitutional provision forbidding either men or women to make a spectacle of themselves, nor to disgrace themselves or make themselves a curse to the community. We do not believe that a prohibitory statute will prevent people from doing those very things. What we say is that if a woman, in an orderly manner, sees fit to walk into a saloon or wine room and take a drink of beer or of whisky, she has the same right to do it as a man has. If she is disorderly, if she conducts herself wrongfully, she should be thrown out the same as a man would be; but by reason of the fact that some women may go into a place of that character and do wrong, is no reason why a woman may not go into a saloon or wine room in an orderly manner and procure her drink.

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If to associate in such places by themselves, or with men, is such an invasion of the morals of the individual and so tends to destroy the home of the individual and affect the public good, then a law should be passed prohibiting the liquor traffic entirely or regulating it in a manner that applies to all alike, making the provisions apply to men the same as to women, and there will be no trouble along the moral line.

We have no quarrel with counsel upon the proposition that the charter provisions authorizes the enactment of the ordinance. We admit that, but the charter provision is not good. It is unconstitutional. This question is covered by our brief. It rests upon the same foundation as the ordinance, because neither the legislature nor the city council has any right to ride over the constitutional provisions.

We do not deem it necessary to go further in this argument because in case No. 4392, filed in this court, we have gone into the same questions at length and the authorities there cited apply with equal force here. We maintain now, as we maintained in our original brief, that the judgment of the county court should be set aside.

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Respectfully submitted,

T. J. O'DONNELL,
MILTON SMITH,
Attorneys for Plaintiff in Error.

143 Nos. 4389 and 4392.

In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error. } Error to the County Court of Arapahoe County.

FRANK ADAMS, JOHN T. BOTTOM, and William H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee. } Appeal from the District Court of Arapahoe County.

Brief for Plaintiff in Error and Appellee on Motion for Rehearing.

Milton Smith, attorney for plaintiff in error and appellee.

144 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error. } No. 4389. Error to the County Court of Arapahoe County.

FRANK ADAMS, JOHN T. BOTTOM, and William H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee. } No. 4392. Appeal from the District Court of Arapahoe County.

Brief for Plaintiff in Error and Appellee on Motion for Rehearing.

The plaintiff in error in the first entitled cause and appellee in the second has filed his motion for a rehearing of these cases,
145 and this brief and argument is filed in support of such motion for the purpose of calling the court's attention more particularly to the points which it is claimed on behalf of plaintiff in error and appellee are erroneously decided.

The court, by the opinion in these cases, holds that the sections of the ordinance in question prohibiting any person owning or having charge of a saloon, etc., from permitting any female person to be or remain upon the premises for the purpose of being supplied with any liquor is valid, because, as it is said, the legislature has

the right to make any restrictions or conditions which it deems proper in regard to the carrying on of the saloon business, or the selling of liquors. This, as a general principle, may be established by the authorities cited in the opinion of the court, and if the application of it to these cases restricted a saloon keeper solely in the conduct of his business, it would have an important bearing upon the decision of these cases, but the primary principle involved in these cases is not the question of regulating the liquor traffic. It is claimed on behalf of the plaintiff in error and appellee that the sections of the ordinance in question unjustly discriminate against women as a class, and that such unjust discrimination works a hardship to the plaintiff in error and appellee and damages his business. This court, in its opinion, says:

"If a discrimination is made against women solely on account of their sex, it would not be good."

But the discrimination made by these sections of the ordi-
146 nance is against every female, and, so far as anything appears in the ordinance itself, it is a discrimination solely on account of sex. This court assumes that the discrimination may be justified upon the ground of public morality, but in order that the question of public morality be raised other conditions must exist otherwise than the presence of women in a place where liquors are sold. The ordinance is general in its terms and prohibits women from being in any place where liquors are sold. It would apply in all respects to a place owned and conducted by women and frequented by women exclusively. If a women's club concluded to dispense liquors to its members, as clubs sometimes do, every member of such a club could be convicted of violating this ordinance, but in such a case the question of public morality, upon which this court relies, could not exist. The question as to whether a woman should or should not drink liquor may be a question of morality in the abstract, but it is not a question of public morality which will justify legislation by ordinance prohibiting such use of liquor by women under all circumstances, and if the presence of women in places where liquor is sold is to be prohibited on the ground of public morality there must exist some other reason than the fact that the liquor is supplied to a woman before public morality is affected and an ordinance forbidding such sale can be upheld. The court, in its opinion, says:

"No penalty moreover is visited upon females for a violation of the provisions. The only penalty imposed is upon the saloon-keeper when he permits them to enter, or remain in the prohibited places for the prohibited purposes."

147 The last clause of section 746 reads as follows:

"Nor shall any female person be or remain in any dram shop, tippling-house, liquor saloon or place adjacent thereto, or connected therewith, and wait or attend on any person, or solicit drinks in any such place."

Section 751 provides a penalty for any person who violates any of

the provisions of article XV, including the sections in question in these cases.

The complaint in the case against the fire and police board alleges:

"That the said fire and police board have instructed the said chief of police and police officers acting under his authority, to keep watch of plaintiff's said premises and in case any woman enters plaintiff's said premises so occupied by him as a place for the sale of liquors to arrest this plaintiff, and any and all such women found or being there, and said fire and police board and said chief of police threaten and state that they will arrest this plaintiff as often as any woman is found in or upon said premises, and will cause him to be fined a like or greater amount for each of said offenses, and threaten to station police officers at the entrance of plaintiff's said premises and to arrest said plaintiff whenever any woman enters said premises, and that said conduct of said police officers acting under
148 the instructions of said fire and police board and said chief of police, has, in a large measure, destroyed plaintiff's business by deterring both men and women from entering said place on account of said officers being present at or near said place, and if persisted in will absolutely destroy and render valueless the said business and property of the said plaintiff."

The injunction issued in this case enjoined and restrained "the defendants from arresting the plaintiff or causing the plaintiff to be arrested charged with any violation of sections 745 and 746 of the ordinance No. 101 of the series of 1898, and from arresting any woman or women that may be in or upon said plaintiff's said premises upon charge of a violation of either of said sections, and from interfering with said plaintiff's said business upon any charge made in connection with said sections 745 and 746, until the further order of this court."

This case was decided in the court below upon a demurrer to the complaint. No facts, except those stated in the complaint, were presented for the court's consideration. From the complaint it appears that the police officers construed this section of the ordinance to prohibit women from being present in a place where liquor is sold and that the ordinance imposed a penalty upon females visiting the place, as well as upon the proprietor. It appeared
149 that the police officers threatened to arrest all women found upon the premises, and that such conduct of the police department had the effect of deterring both men and women from visiting the place, and thus materially interfered with the plaintiff's business. By the construction put upon this section of the ordinance by this court it is plain that the police authorities had no right to arrest any woman for a violation of this section of the ordinance and that the threatened action of the police authorities was entirely unjustifiable, was an unwarranted interference with plaintiff's business affairs, and, under the allegations of the complaint, such interference injured the plaintiff and the injunction was properly issued to restrain such unwarranted interference with plaintiff's business.

This court does not decide that plaintiff was not entitled to an injunction to restrain such interference with his business, but does decide that the ordinance does not impose any penalty upon females violating its provisions, and, therefore, decides that the police department had no authority to make such arrests or interfere with plaintiff's business to that extent. This being so, the judgment of this court should sustain the injunction in so far as it enforces the rights which this court decides the plaintiff did possess and the judgment of the court that the complaint should be dismissed is erroneous.

The district court case was decided upon a demurrer to the complaint and the county court case upon an agreed statement of facts. In neither case was there any evidence before the court that the enforcement of the ordinance against the presence of women in plaintiff in error and appellee's place of business was for any
150 other reason than that the ordinance in their opinion prohibited women from being present in such places. The enforcement of the ordinance was a discrimination based upon sex alone, so far as anything before the court in either case showed. The police officials did not justify the arrest of the plaintiff and the women being present in his place of business for any other reason than that the presence of women in such place of business was contrary to the ordinance. No injury to public morality was alleged or shown, and the lower courts would have had no justification for finding any such injury to public morality from the allegations of the complaint in the one case or the agreed statement of facts in the other, and the conclusion of this court that such an injury to public morality existed is therefore outside of the showing made by the records in these cases.

In the opinion of this court *In re* Morgan, 26 Colo., 415, the fact that the eight hour law did not contain anything showing that it was enacted for the benefit of the public health was held an important circumstance tending to show that the law was not justified under the general police power of the State. In the opinion, on page 421, it is said:

"The protection of the public health is mentioned neither in the body of the act, nor in its title, as is usually the case in similar acts of other States. When it is clearly perceived from the terms of an act that the thing prohibited necessarily affects the public health, it may not be necessary expressly to declare therein what the object of the act is; but where the result is doubtful, the object of
151 the act ought, somewhere and somehow, to be stated, and, in accordance with some decisions, must be thus proclaimed, else the act will be held invalid on the ground that it is deceptive in not expressing its real object."

There is no mention either in the charter or the ordinance that these sections are designed to promote public morality. They appear to be, as this court finds them to be, exclusively regulations of the liquor traffic, and, under the reasoning of this court in the Mor-

gan case, *supra*, this portion of the ordinance can not be justified on the ground of public morality.

We respectfully submit that the question to be decided by this court is the right of a woman to purchase liquor at places where it is sold independent of any question of public morality, or of the regulation of the liquor traffic. If public morality is likely to be injured it is the duty of the legislature or city council to provide proper laws and ordinances which will operate without discrimination against women on account of sex alone to prevent such injury; and if, as this court says, the discrimination against women solely on ac-ount of their sex is not good, then such discrimination can not be justified on the ground that it is a regulation of the liquor traffic or on the ground that it is a regulation concerning public morality. Public morality can be upheld by appropriate ordinances which do not discriminate against any class, and likewise the liquor traffic can be regulated by legislation of the same kind. To say that under the guise of regulating the liquor traffic the legislature or city council can discriminate against women is equivalent to saying that any discrimination can be
152 made and enforced against the proprietors of places where liquor is sold notwithstanding how they may affect the community generally, and as well the person engaged in the business. If the city council can prohibit a saloon keeper from selling liquor to women it could equally prohibit the sale to any other class distinguished by any arbitrary criterion which it might think proper. It might prohibit the sale to men whose names began with certain letters of the alphabet, or who wore certain kinds of clothing or lived in certain places, or for any other reason, no matter how absurd or inapplicable, as a regulation of the liquor traffic.

The principle which this court enunciates is that any regulation of the liquor traffic is proper, but we respectfully submit that any principle which would lead to such absurd conclusions is not law, that a rehearing should be allowed in these cases, and an opinion rendered not subject to these objections.

Respectfully submitted,

MILTON SMITH,
Attorney for Plaintiff in Error and Appellee.

Endorsed on cover: File No. 18,625. Colorado supreme court. Term No. 101. Daniel Cronin, plaintiff in error, *vs.* The City of Denver. Filed July 26, 1902.

DANIEL CHOATE,

vs.

THE CITY OF DENVER, Defendant in Error.

In Error to the Supreme Court of the State of Colorado.

BRIEF OF PLAINTIFF IN ERROR.

MILLARD SMITH,
Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 101.

DANIEL CRONIN, PLAINTIFF IN ERROR,

vs.

THE CITY OF DENVER, DEFENDANT IN ERROR

In Error to the Supreme Court of the State of Colorado.

STATEMENT OF THE CASE.

Case No. 18624, in this court, is a companion to this. Both were decided by the Supreme Court of Colorado against Daniel Cronin, both grew out of the same transactions. This case arose from the arrest of Cronin and his subsequently being fined by the police and county courts. That partook of the nature of an injunction suit.

The printers, or the clerks of the Supreme Court of Colorado, or of this court, have mixed the papers in the two cases, in that the assignments of errors belonging to this case are found on page 7 of the transcript of record in case No. 18624, and the assignments of

errors of No. 18624 are found on page 4 of the transcript of record in this case.

Complaint was lodged in the Police Court of the city of Denver to collect $500 for the violation of the ordinance of the city of Denver, and particularly section 746 thereof; said ordinance being numbered 101 of the series of 1898. (Folio 10.)

On the 23d day of May, 1901, a police magistrate fined Cronin $50 and costs. (Folio 11.) On May 31, 1901, an appeal bond to the County Court was filed and approved, and on said day the appeal papers were lodged with the clerk of the County Court. (Folio 12.)

Thereafter such proceedings were had that on the 25th day of July, 1901, a trial was had before the county judge, and by him the cause was taken under advisement; and, thereafter, and on, to wit, the 27th day of July, the judge of said court overruled the motion of the defendant for a dismissal of the cause, and entered judgment against him, fining him the sum of $100 and costs. (Folio 15.)

Said trial before the County Court was had upon the following agreed statement of facts:

"STATE OF COLORADO, COUNTY OF ARAPAHOE, ss.
"IN THE COUNTY COURT.

"CITY OF DENVER, *Plaintiff*,
vs.
"DANIEL CRONIN, *Defendant*.

"STATEMENT OF FACTS.

"The plaintiff, The City of Denver, and the defendant, Daniel Cronin, by their respective attorneys, Messrs. H. M. Orahood and N. B. Bachtell, for the plaintiff, and T. J. O'Donnell and Milton Smith for the defendant, submit the following agreed statement

of facts and agree that the same stand as a statement of facts necessary and incident to the final settlement and determination of the issue joined in the above entitled cause:

"1. That the city of Denver is a municipal corporation operating under a special charter granted by the legislature of the state of Colorado.

"2. That Frank Adams is fire commissioner of the city of Denver; that John T. Bottom is police commissioner of the city of Denver; and that William H. Griffith was excise commissioner of the city of Denver at all times hereinafter mentioned, and that the three constituted the fire and police board of the city of Denver.

"3. That under and by virtue of said charter provisions, the fire and police board have control of the granting of licenses for the carrying on of dram shops, saloons and tippling houses within the limits of said city of Denver, under the regulations and provisions of the charter and ordinances of said city, and have power to make arrests for violations of the provisions of the ordinances of the city of Denver in that behalf made and passed.

"4. That the said defendant has fitted up at the corner of Eighteenth and Champa streets, in said city of Denver, and at a number known as 1761 Champa street, a saloon, and has been at said place for more than nine years last past, carrying on said business under a license from the said city of Denver, covering all the premises above mentioned and all parts thereof hereinafter described.

"5. That said premises are so arranged that in passing from the main barroom one enters a hallway on one side of which are two smaller rooms, and on the other side of said hallway is one room, which last mentioned room is used partly as a storage room, and partly as a place for serving beverages and drinks; that the other two rooms above mentioned are used for the purpose of serving drinks in to customers and

patrons of the said defendant's place. That in the rear of said rooms is another hallway which leads out onto Eighteenth street in the said city of Denver. That all of said premises so described are included in one large room, but which room is partitioned off and divided by partitions extending toward, but not reaching the ceiling. That in the conduct and management of said business it has been the custom and habit of the said defendant to serve beer, whiskey and other drinks to women the same as to men, and in so doing the smaller rooms hereinbefore described have frequently been used for said purpose.

"6. That article 15 of ordinance No. 101, of the series of 1898, is entitled "Liquor Saloons, Dram Shops and Tippling Houses," and contains, among other provisions, sections reading as follows:

" 'Sec. 745. Each and every liquor saloon, dram shop or tippling house keeper, licensed under the provisions of this article, who shall by himself or his agent, clerk or servant, permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon, dram shop or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided.

" 'Sec. 746. No person, whether as principal, clerk, agent or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith in any manner whatsoever, either by doors or otherwise, shall suffer or permit any female person to be or remain in such liquor saloon,

dram shop, tippling house or other place where intoxicating or malt liquors are sold or given away, for the purpose of their being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house, shall employ or procure, or cause to be employed or procured, any female person to wait on or in any manner attend any person in any dram shop, tippling house or liquor saloon, or in any place adjacent thereto or connected therewith, where intoxicating or malt liquors are sold or given away; nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait and attend on any person, or solicit drinks in any such place.'

"7. That such ordinance No. 101, of the series of 1898, has been published under the authority of the city council of the city of Denver, in a book entitled 'Compiled Ordinances and Charter, the City of Denver, compiled by Henry J. Hersey of the Denver Bar,' and printed in the year 1898 by The Smith-Brooks Printing Company, Denver, Colorado.

"8. That on, to wit, the 22d day of May, A. D. 1901, at about the hour of nine o'clock in the afternoon, certain women, viz., Mary Doe and Alice Roe, were upon the above premises of said defendant for the purpose of their being served with intoxicating liquors, and were served with intoxicating liquors by said defendant, in one of the rooms above mentioned, and said liquor was then drank upon said premises and paid for, being the violation charged in the complaint hereinafter set out.

"9. That the said women were not intoxicated on said premises, and that there were no disorderly persons upon said premises at said time.

"10. That on, to wit, the 22d day of May, A. D. 1901, the said Hamilton Armstrong, chief of police of the city of Denver, acting under the direction of

said fire and police board of the city of Denver, caused this defendant to be arrested, charged with the violation of said sections 745 and 746 of said ordinance No. 101, of the series of 1898, by written complaint, of which complaint the following is a copy:

(See folios 43 and 44.)

"11. That said defendant appeared before the police magistrate of said city of Denver upon being notified of the filing of said complaint, and on, to wit, the 23d day of May, A. D. 1901, the police magistrate of said city of Denver, found defendant guilty of violation of said ordinance, and fined the defendant $50 and costs, from which judgment the defendant appealed to this court, and this case now stands for trial and determination upon said complaint, and this statement of facts. That said article No. 15 of said ordinance No. 101 is made a part of this stipulation as the same appears in said compiled ordinances of 1898."

Upon the reading of said statement of facts, counsel for the defendant moved that he be discharged, on the ground that the ordinance and the provisions of the charter authorizing it was illegal, unconstitutional, and contrary to the Constitutions of the state and of the United States, and the complaint was a nullity. (Folio 20.) But the motion was denied, and the judgment aforesaid entered.

Exception was taken to the overruling of the motion for discharge and the judgment and the entry thereof. The case was then lodged in the Supreme Court of the state of Colorado, on the 19th day of August, 1901. Errors were assigned and the briefs filed, and the cause came on for hearing and was argued before the Supreme Court at the same time case No. 18624 was argued.

The Supreme Court of the state of Colorado refused to set aside the judgment of the County Court and affirmed it, and from said judgment, after the denial by the Supreme Court of Colorado of the petition for rehearing, it was brought to this court on error for review of the questions involved.

Sections 745 and 746 of the ordinance are set out in full in the agreed statement of facts printed in this brief.

ERRORS SUPREME COURT OF COLORADO.

The Supreme Court of Colorado erred in affirming the judgment of the County Court of Arapahoe county, Colorado. It erred in deciding that sections 745 and 746 of the compiled ordinances of the city of Denver are valid and not in conflict with the provisions of the Constitution of the state of Colorado and of the United States. It erred in not deciding that the judgment of the County Court of Arapahoe county, Colorado, was contrary to law, and denied the right asserted and claimed by the plaintiff in error under the provisions of the Constitution of the United States. It erred in failing and refusing to reverse the judgment of the County Court of the county of Arapahoe and state of Colorado. It erred in deciding that sections 745 and 746 are valid, upon the ground that they are restrictions upon saloon keepers alone, and could properly be made and enforced against saloon keepers, and that they do not violate the rights of women under the Constitution of the United States. It erred in holding said ordinances valid as a proper exercise of the police power in the

regulation of the liquor traffic, because the regulation of the liquor traffic is not involved in the question. It erred in holding the ordinances valid on the ground that they were enacted in the aid of public morality, for the reason that there is nothing in the record, nor in the ordinances, that shows such to have been the purpose of the ordinances, or that the enforcement of the sections of the ordinance would in any way aid or affect the public morality. The court erred in holding that the sections of the ordinance prohibiting persons owning or having charge of saloons from permitting any female person to be or remain on the premises, is valid, because the legislature has a right to make any restrictions or condition which it deems proper in regard to carrying on the saloon business, —in that the question here is not the regulation of the liquor traffic, but is an effort to discriminate against women as a class, and such discrimination invades the civil rights of plaintiff and damages his business. The court erred in holding the sections valid as being in aid of public morality, for the reason that the ordinance in general terms prohibits women from being in any place where liquors are sold; but before the question of public morality may be raised, other conditions must be raised than the presence of women in a place where liquors are sold. Under such ruling, if liquor were sold in a women's club, conducted by women and frequented by women exclusively, every member of the club would be convicted of violating this ordinance. We contend that the ordinance does not, by its terms, nor does the statement of facts in the pleadings, show that it can be in the aid of public morality, and the Supreme Court of Colorado erred in that regard.

ARGUMENT.

In order that the position of plaintiff in error may be clearly comprehended by the court, we say, at the outset, that while we contend that this ordinance is unreasonable, arbitrary, partial and oppressive, we do not seek to have it declared void for these reasons alone, because it is true that the power to adopt this ordinance—these sections thereof—was expressly conferred by the general assembly upon the city council of the city of Denver by the fifth clause of subdivision 12 of section 20 of the charter, which is as follows:

"That no liquor saloon, dramshop or tippling house shall have or keep in connection with, or as part of such saloon, tippling house or dramshop, any wineroom or other place, either with or without doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such tippling house or dramshop, and there be supplied with any kind of liquor whatsoever."

And we admit that these sections of this ordinance, being expressly authorized by this specific and definite legislative authority—and being within the express powers granted—can not be held to be void, because unreasonable for the reason that the court in such case can only construe the extent of the grant, and has, and can have, nothing to do with the reasonableness of an ordinance carrying this grant into effect. *But* the contention is, that this charter provision is void—and hence the ordinance adopted in pursuance of its grant—because it violates certain consti-

tutional provisions of the United States, and of the state of Colorado, and because it is contrary to and in violation of other statutory provisions of the state of Colorado regarding the civil rights of its citizens, and because the enforcement of it nullifies those provisions and takes away these civil rights.

These provisions, constitutional and statutory, thus violated, are these:

Article XIV, amendments to the Constitution of the United States, is as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make, or enforce, any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The Constitution of the State of Colorado, Article II, section 3, being section 276, page 145, Mills' Annotated Statutes, is as follows:

"Section 3. That all persons have certain natural, essential and inalienable rights, among which may be mentioned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness."

Section 25, Article II, of the Constitution of the State of Colorado, being section 298, page 199, Mills' Annotated Statutes, is as follows:

"Section 25. That no person shall be deprived of life, liberty or property without due process of law."

In chapter 27, laws of Colorado, entitled "Civil Rights," at section 427, page 575, Mills' Annotated Statutes, there is found this statutory enactment, to wit:

"That all citizens of this state, regardless of race, color or previous condition of servitude, shall be entitled to full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, churches, barber shops, public conveyances, theaters, and other places of public resort or amusement."

We shall consider these statutory and constitutional provisions in the inverse order to that in which they are cited herein.

The provision guaranteeing civil rights and entitling all persons to the full and equal enjoyments of all * * * places of public resort and amusement is clearly violated by the enforcement of this ordinance. This provision—section 427, Mills' Annotated Statutes—was taken from our sister state, Illinois. In construing statutes, great weight is rightfully given to the construction prevailing in the state from which the statute is taken.

In Joseph Baylies vs. Josephine M. Curry, 128 Illinois, page 287, this statute was under consideration by the Supreme Court of Illinois. This was a case where a negro woman was denied access to a theater on account of color. The court says:

"It would be difficult to employ more comprehensive and sweeping language to abolish all distinctions in accommodations, facilities, privileges * * * than that thus employed. * * * It is not contended, nor in our opinion can it reasonably be contended, that these sections are inoperative by reason of repugnance to provisions of the Constitution of this state, or of the United States."

Our provision, then, is a valid law, operative and not unconstitutional. If any person violates or aids in violating this law—section 427—it is provided, on conviction, that they shall be fined not more than $500, or imprisoned in the county jail not exceeding three months, or by both such fine and imprisonment, at the discretion of the court. *That is,* if any person *prevents* another from having free access to places of public resort or amusement they violate the law, and are liable to a fine and a degrading punishment; while the ordinance in question provides that if any person *permits* any one of a large class of our citizens, to wit, all women, to have free access to such places of public resort or amusement, they are liable to a fine and a degrading punishment. If he *prevents* such free access, he is punished by virtue of our bill of civil rights; if he *permits* such free access, he is punished under the provisions of this ordinance. We submit that they are diametrically opposed, repugnant, the one to the other, and that both can not be valid, constitutional laws.

In Railroad Company vs. Brown, 17th Wall, page 445, a negro woman recovered $1,500 damages for being excluded from a car.

These were both cases of women of color—the judgments would have been the same had the exclu-

sion been of white women.—The bill of rights gives this free and equal enjoyment and access to *all* citizens—women are citizens.

The ordinance in question denies this free, equal enjoyment and access to all women, white and black.

Sedgwick, in his work on the construction of statutory and constitutional law, at pages 400 and 401, says:

"It is a general rule that municipal by-laws and ordinances must not be in conflict with the general law."

And in commenting on a case—Davis vs. Mayor, etc., 1 Duer, page 451—wherein it was contended that the courts had no power to interfere with the municipal legislation of a city, it is said:

"Although such a municipal body is clothed with legislative and even political powers, yet in the exercise of all its powers, it is just as subject to the authority and control of courts of justice, to legal process, legal restraint and legal correction as any other body or person, legal or artificial."

Thus it is evident, that a city can no more than a natural person violate the Constitution of the United States, or of the state, and that municipalities have no power to repeal, directly, or indirectly, the laws of the state, and that their legislation must accord with the policy of the legislature of the state.

It is plain that this ordinance is contrary to this section 427 of the statute, in denying to a large class of citizens equal access and enjoyment to places of

public resort and amusement; and that such law is void there is abundant authority.

City of New Orleans vs. Oscar Phillipi, 9 La. Ann., page 44.

Siloam Springs vs. Thompson, 41 Ark., page 461.

Alfred Haywood vs. The Mayor, 12 Ga., page 405,

where it is said:

"The general assembly can not confer upon a corporation the power by ordinance to repeal a statute of the state. A by-law of a corporation repugnant to the Constitution, common or statute law of the state, is void."

Additional authorities might be cited, *ad infinitum*. We do not think this court will question this law. The question is, Can a municipality, under the guise of establishing police regulations and regulating the morals of the community, enact ordinances violating existing laws and constitutional provisions? We think not. This matter will be discussed further herein in this brief, under the head of police regulations, morals and general welfare.

It has been shown sufficiently from the decisions of the state of Illinois, from whence our bill of rights is taken, and from other decisions, the authority of which will not be questioned, that our section 423 is an operative, wise, legal and constitutional enactment. Indeed, Chief Justice Campbell, of the Supreme Court of Colorado, in his adverse decision, practically admits that section 423, Mills' Annotated Stat-

utes, preserves to all citizens of the state (women among them) equal enjoyment of accommodations, advantages, facilities and privileges of inns, * * * and other places of public resort or amusement; but says:

"With respect to the latter contention, it is sufficient merely to say that if this section, 423, when enacted, gave to women the right equally with men to frequent saloons, *and if such right depended solely upon statute* (italics are ours) it was taken away by the general assembly when at a later date it adopted a charter for the city of Denver, whereby authority was conferred upon the city to deprive women of the enjoyment of the so-called right."

It is submitted that this is assuming the constitutionality of the very provision in dispute, to wit: the constitutionality of this charter provision. How could the legislature confer upon the city the authority to deprive a large class of citizens of the equal enjoyment of places of public resort? By the passage of an unconstitutional enactment?

It is reiterated that section 423 and this charter provision upon which this ordinance is based, are absolutely inconsistent and repugnant—that they can not both stand—that one is void, and it has been shown that section 423 is such an enactment as is upheld in all jurisdictions; but it is *not true* that such right depends solely upon this statute. A woman's right to go to such places, and a proprietor's right to receive her, is guaranteed both by the Constitution of the United States, and by the Constitution of the State of Colorado.

Section 25, Article II, of the Constitution of the state of Colorado, found at page 199, Mills' Anno-

tated Statutes, is violated by this ordinance passed in pursuance of this unconstitutional charter provision, in two ways:

First, it deprives all women—a large class of our citizens—of their freedom and liberty to go to any and all places of public resort and amusement, and to drink what and where they please without due or any process of law.

Second, it deprives a large class of our business community—all merchants dealing in wines and liquors at retail, a licensed and lawful business—of their property, without due process of law, by forbidding them under heavy penalties from selling their merchandise to women, who compose nearly, or quite, half of our population, thus limiting their sales and curtailing their profits, and thereby depriving them of their property as effectually as if actually confiscated.

This constitutional prohibition is also in the Constitution of the United States, forbidding any state from depriving any person of life, liberty or property without due process of law, and is contained substantially in all the state Constitutions, and has been construed innumerable times; and it is unnecessary to cite authorities to this court to show that the consensus of opinion in all jurisdictions is, that whenever private property is taken without due process of law, this constitutional provision is violated; no matter what the character of the proceeding be—it is immaterial whether it be administrative, judicial, summary or other—it matters not; the object sought to be achieved by the provision is, that in each state there shall be established an administration of law such as

will promote general justice—justice to each and all—black and white—men and women—without any distinctions—equal and impartial, recognizing and not impairing the individual rights of each and every citizen.

This ordinance is a legislative promulgation to the effect, that this business—the selling of wines, beer and liquor—was prejudicial to the welfare and morals of a community, was in fact a nuisance, and it is sought to be abated by abridging the liberty of all women, and by curtailing the profits, taking the property without process of law of numerous business men engaged in the retail sale of liquors. A municipal body can not do this lawfully. They can not by ordinance or enactment declare any particular thing a nuisance which has not theretofore been pronounced to be such by law or so adjudged by judicial determination.

This is a constitutional question, and the intention is to argue it upon principle, and not to burden the court unnecessarily by the citation of supposedly analogous cases; but we wish just here, to call the attention of this court to an opinion rendered by the lamented Justice Miller, in the case of Yates vs. Milwaukee, reported in 10 Wall, at pages 504, 505. He says:

"This riparian right is property, and is valuable, and though it must be enjoyed in due subjection to the rights of the public, it can not be arbitrarily or capriciously destroyed or impaired. It is a right of which when once vested the owner can only be deprived in accordance with established law, and if necessary that it be taken for the public good, upon due compensation. The act of the Wisconsin legislature,

approved March 31, 1854, confers upon the city of Milwaukee the authority to establish dock and wharf lines on the banks of the Milwaukee and Menominee rivers and restrain and prevent encroachments upon said rivers and obstructions thereto, and it is by this statute that the summary proceedings for the removal of appellant's wharf are supposed to be authorized. But the mere declaration of the city council of Milwaukee that a certain structure was an encroachment or obstruction did not make it so; nor could such declaration make it a nuisance unless it in fact had that character. It is a doctrine not to be tolerated in this country that a municipal corporation, without any general law, either of the city or of the state, within which a given structure can be shown to be a nuisance, can, by its mere declaration that it is one, subject it to removal by any person supposed to be aggrieved, or even by the city itself. This would place every house, every business, and all the property of the city at the uncontrolled will of the temporary local authorities. Yet this seems to have been the view taken by counsel who defended this case in the Circuit Court; for that single ordinance of the city declaring the wharf of Yates a nuisance and ordering its abatement, is the only evidence in the record that it is a nuisance or an obstruction to navigation, or in any manner injurious to the public."

Note the similarities in the facts in this case and the case at bar.

Our property—the right to sell to all citizens who wish to buy—is valuable. It is being arbitrarily and capriciously destroyed and impaired. It is a vested right for which we have paid our license. We should not be deprived of it except in accordance with established principles of law.

Our legislature, like Wisconsin's, conferred upon the city authority to pass the ordinance.

As in the Wisconsin case there is no other evidence, than the ordinance itself, that the business was unlawful or injurious to public morals or a nuisance; nor could the declaration by ordinance make it so unless, in fact, it had that character, and here, as there, it may be said that any business in the city could be thus ruined by the action of these pro tem. law makers.

It has been frequently decided in Illinois, from whence we derive our laws as to the sale of liquors, that such sale is regulated under the power to prevent nuisances, and it is well settled,

"That a particular use of property is declared a nuisance by an ordinance of the city, does not make that use of property a nuisance, unless it is in fact so, and comes within the common law of statutory idea of nuisance."

See Wood on Nuisance, page 977, and authorities quoted in Note 1.

It is submitted that both on principie and the authority of the adjudged cases, it is clear that, while the authority of a municipality to enact ordinances and by-laws on the subject of the sale of spirituous and other intoxicating liquors, whether conferred by the general law of the state, or by special charter provision, is such as to authorize them to enact all ordinances which, in the judgment of the law-making power, tend to promote the general welfare of the community, that there is a limit beyond which they can not go. The ordinances must be in conformity to the general laws of the state, and they can not be such as are repugnant to and violative of the Constitution of the state, or of the United States; nor can they

be such as are utterly opposed to and nullify existing statutory laws, and such authority can not be construed as imparting to it the power to repeal the (general) laws in force.

Dillon on Municipal Corporations, sections 315, 316 and notes.

This same author cites, with approval, a decision by the Supreme Court of Tennessee, saying the decision reflected credit on the court which rendered it, where an ordinance was declared void which ordered the arrest, imprisonment and fine of all free negroes found out after 10 o'clock. It was oppressive, partial and unfair—this was before the war, and the constitutional amendments intended for the protection of colored people had not then been enacted—we cite the case for the reasoning contained in it, and because it is so heartily approved by this high authority—doubtless the same ruling would have followed had the ordinance been directed against women or any other class. The case is found in

Mayor vs. Winfield, 8 Humphrey (Tenn.), page 707.

That this ordinance is a special and unwarranted discrimination against a large class of citizens is too plain for argument. They are not, by law, allowed. (See section 322, Dillon, Municipal Corporations.)

The conflict between this ordinance and the laws and Constitution of the state is irreconcilable. As we have shown, the latter guarantees to all citizens certain rights to property and to privileges, and punishes any who prevent this access, while by the former,

to wit, the ordinance, all who permit such access to public places of amusement and resort are punished.

The Constitution is law—the fundamental law—and the courts have universally construed such laws as our bill of rights to be constitutional. Necessarily, this conflict being irreconcilable, this ordinance can not prevail. It, the ordinance, is not void solely because it is unjust, partial and oppressive, and because it violates natural, social and political rights of our citizens; but because it prohibits rights and privileges, and takes away property rights *guaranteed and protected* by the Constitution and laws of the state and of the nation; not only such rights as rest merely upon the Constitution, but upon the great principles of eternal justice which lie at the foundation of all free governments. As is well said, in People vs. Morris, in 13 Wend., page 325.

"These and other vested rights of the citizen are held secure and inviolable, even against the plenitude of power of the legislative department."

Neither the state nor its creature, a municipality, can exercise such surveillance over citizens as is attempted by this ordinance; they can not say to the merchant, you may sell to Irishmen, but not to Germans; to Americans, but not to Swedes; to men, but not to women; nor can they control the tastes, habits, appetites, dress, food or drink, of any class of citizens.

Broad and comprehensive as the police power is, it can not go this far; it can not, in opposition to the policy of established legislation, and in violation of constitutional enactments, take possession of the persons and property of its citizens absolutely, and regu-

late and reform them in such a manner as in the judgment of the lawmakers will produce the ideal mothers and fathers.

In order to show the legal meaning of the words "liberty" and "property," as used in the constitutional provisions, and to demonstrate that there is a deprivation of both in this ordinance, note the following from Mr. Justice Field, in Munn vs. Illinois, 94 U. S., page 142:

"By the term 'Liberty,' as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, as his judgment may dictate, for the promotion of his happiness; that is, to pursue such callings and avocations as may be most suitable to develop his capacities and give to them their highest enjoyment."

"The same liberal construction which is required for the protection of life and liberty in all particulars in which life and lberty are of any value, should be applied to the protection of private property. If the legislature of the state, under pretense of providing for the public good, or for any other reason, can determine against the consent of the owner, the uses to which private property shall be devoted, or the prices which the owner shall receive for its uses, it can deprive him of the property as completely as by a special act for its confiscation and destruction. If, for instance, the owner is prohibited from using his building for the purposes for which it was designed, it is of little consequence that he is permitted to retain the title and possession."

The trade of Cronin, the plaintiff in error, was lawful. He had paid his license for the privilege of

selling alcoholic drinks, and his capital invested in preparing his place for the accommodation of this class of custom was fully protected by law. Now, can the municipality, by an enactment, annihilate this traffic?

It is true that they may in the exercise of police power for purposes of public utility to preserve the peace, health, tranquility and morality of the community, enact such laws as it may deem proper to accomplish these ends; but we urgently contend that its power in this direction is limited by the constitutional provisions, and that there are personal and property rights beyond and above its control, and this brings us to the consideration of the powers of municipalities to enact laws infringing such rights under their

Police Powers for the Protection of the Health and Morals of the Community.

May a saloon keeper sell liquor to women in the same manner as to men? That leads to the inquiry of whether the board did act legally, and whether Cronin might sell liquor on his premises to a woman the same as to a man. The defendants in error say "No;" that certain ordinances prohibit it. The plaintiff in error says these ordinances are illegal and void, as being in contravention of the Constitution of the United States and of Colorado, and of the laws of Colorado. Defendants in error seek to uphold them on the ground that the council in the exercise of the police power might pass an ordinance of that character.

The police power in its broadest acceptation means the general power of the government to

preserve and promote the public welfare, even at the expense of private rights.

New Orleans Gas Light Co. vs. Hart, 40 La. Ann., page 474.

4 Blackstone Com., 162.

Commonwealth vs. Alger, 7 Cushing (Mass.), 84.

Stone vs. Mississippi, 101 U. S., 814.

Generally speaking, it may be said that the police power is exercised by the legislative department of the government; that it is limited by constitutional provisions in the United States, and other fundamental law; that it can only be exercised within given rules, and for the public good; that rights guaranteed by the Constitution can not be violated; that if it is obnoxious to vested rights and unreasonable, the courts will declare the law void; that it must be exercised so that all are affected by it, and not one class favored and another class imposed upon.

These statements are borne out by the following quotations and citations:

"The legislature is clearly the department of the government which can and does exercise the police power."

Tiedeman's Limitations of Police Power, Sec. 2.

"The police power is limited by the state and federal Constitutions, the same as any other power."

Same authority.

While it will be conceded by everybody familiar with this question that, in the exercise of the police power, many salutary statutes have been upheld, on the contrary, simply because a legislature or municipal council says a law is enacted to protect the public morals, etc., does not make it so. That is to be determined by well established rules. Police power is circumscribed by the federal and state Constitutions.

"While it seems that everything necessary for the promotion and preservation of the public welfare may be done by the legislature in the exercise of the state's police power, it must be remembered that there are two written Constitutions fixing the limits which may not be transcended, viz.: The federal Constitution and the state Constitution."

18 Amer. and Eng. Enc. of Law, page 760.

"Like other powers of government, there are constitutional limitations to the exercise of police power. The legislature can not, under pretense of exercising this power, enact laws not necessary to the preservation of health and safety of a community that will be oppressive and burdensome upon the citizens. If it should do so, it would be the duty of the court to declare such legislative act void."

Toledo, etc., R. Co. vs. Jacksonville, 67 Ill., page 37.

People vs. Gillson, 109 N. Y., 389.

1 Dillon, Municip. Corp., 142.

Cooley, Const. Lim. (6th Ed.), chapter 16.

It is plain that any action by the legislature or a municipality which infringes upon the civil rights or

the property rights of any person will be set aside as unconstitutional and void, unless it is absolutely demanded by the common welfare. If the common welfare of a community demands that there shall be no sale of intoxicating liquors, it applies to sales to men as well as to women.

In the case of Mugler vs. Kansas City, 123 U. S., 623, which is considered to be leading case upon this subject, it is said:

"It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exercise of the police powers of the state. There are of necessity limits beyond which legislation can not rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute,—Sinking Fund Cases, 99 United States, 718,—the courts must obey the Constitution rather than the law making department of government, and must, upon their own responsibility, determine whether in any particular case these limits have been passed. To what purpose it was held in Marbury vs. Madison, 5 United States, 1 Cranch, 137, are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons upon whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. The courts are not bound by mere form, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry, whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect

the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so judge, and thereby give effect to the Constitution."

The Court of Appeals of Colorado quotes from this decision in the case of Platt, etc., Co. vs. Lee, 2 Colo. Court of Appeals, 184, and the case is also quoted in Platt, etc., Co. vs. Dowell, 17 Colo., 376.

What do these authorities mean?

They mean that in the exercise of the police power the legislature is controlled by constitutional enactments. That means that the constitutional provisions which are referred to control the legislature in its attempted exercise of the police power. In other words, when a Constitution guarantees to *every person* the same privileges and immunities, any act of the legislature, passed with the view of protecting the public morals or the public health, must apply to all individuals, unless those individuals be under some legal disability. It means that any act of the legislature, whereby it discriminates against women as such, is void. It means that if a legislature or municipality desires to regulate the liquor traffic, which it may do under the police power, it must exercise that police power so that it will apply to all of the citizens; in other words, if the legislature or city council desire to do away with wine rooms, it must provide that men shall not frequent them. It is impossible, under these constitutional limitations, to say that men may go in wine rooms, and that women may not. It is impossible to say that men may go in saloons and buy a drink of liquor, and wo-

men can not. If, in an exercise of police power, it is proper not to grant any license and to close all saloons, well and good; but it is not proper to close saloons to women and leave them open to men. It is not right to say that wine rooms may exist for men and not for women. If a municipal council does not see fit to do away with wine rooms altogether, and on the ground that the association of the two sexes together when drinking liquor is detrimental to the public morals, then the council should pass an ordinance, or the legislature should pass an act, making or providing for separate wine rooms for women and separate ones for men, and not say that there may be wine rooms or saloons for men, and none for women. It might even go that far in its regulations; but it can not go to the extent of depriving women of the privilege of a wine room, and allow it to exist for men.

In the case of the United States vs. Cruikshank, 92 U. S., 542, the Supreme Court observes that every republican government is in duty bound to protect its citizens in the equality of rights. The duty was originally assumed by the states, and it still remains there. The only obligation resting upon the United States government is to see that the states do not deny the right.

There can be no case found where the exercise of the police power for the protection of the public morals has ever been exercised in a discriminating way against a woman, simply because she was a woman. The police power may be invoked to regulate the liquor traffic; it may be invoked as a basis of legislative enactments as to the hours and places where liquor may be sold. If it is invoked to regulate wine rooms, it

must be invoked not against the class known as females, but it must be invoked against both sexes; and if it is invoked against both male and female, it may be invoked to prohibit the wine room entirely, or it may be invoked to provide separate wine rooms for women and men, if they are going to have wine rooms at all, and it appears that the association of the sexes is bad. Then there is no discrimination against women in favor of men. This would be in accordance with decisions in certain states, where the statute requires separate accommodations in coaches and carriages for the white and colored races.

Louisville, etc., R. R. Co. vs. State, 66 Miss., 662; affirmed in 133 U. S., 587.

Neither the legislature of the state nor the council of the city has authority to violate the constitutional guarantees under the guise of measures claimed to be for the protection of the public morals, the public health or the public safety.

The sale of intoxicating liquors is not an unlawful business. There is no constitutional provision prohibiting the sale of liquor to either men or women. Unless there is a constitutional prohibition, a woman has as much right, under the Constitution of the United States and of the state of Colorado, and under the laws of the state of Colorado, to enter a saloon and purchase a drink of whiskey or beer as a man. If she has the right to purchase the same as a man, the saloon keeper has the right to sell to her the same as to a man; and any ordinance which prevents him from selling to a woman, when he may sell to a man, is an invasion of his civil rights, and his property rights,

because the right to sell to a woman or to a man is a property right.

The word "person" is used in the constitutional provision, not male or female. It includes both. The male and the female have equal rights of enjoying their liberty, and of seeking and obtaining their safety and happiness. Under this provision a female has as much right to seek her enjoyment and happiness in the taking of a glass of beer or whiskey as the male, and any act by the municipality of the city of Denver, preventing her from so enjoying those rights, is a violation of the constitutional provision. It is equally a violation of the United States constitutional provision, and of the state of Colorado, to prohibit a saloon keeper from selling to a woman.

The provision of the United States Constitution, that no state shall pass a law which shall deny the equal protection of the laws to every citizen, applies with peculiar force to the provisions here, because, if the state can not pass such a law, a municipality can not. This matter is well considered, In re Mary McGuire, 57 Cal., page 604. In that case an ordinance of the city of San Francisco was claimed to be in conflict with the Constitution of the state of California, which constitutional provision was that—

"No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession."

That constitutional provision is no broader than those we have quoted herein. It was there held that the ordinance prohibiting a woman from serving drinks in a bar room was in direct violation of said

constitutional provision. It was contended in that case that the inhibition or disqualification was not on account of sex, but on account of its immorality; that such employment of a woman is of a vicious tendency, and hurtful to sound public morality; that such business is not *malum in se*, but of a hurtful and immoral tendency, and on account of this immoral tendency it was claimed that the exercise of the authority given by that ordinance was nothing more or less than the exercise of the police power which is vested in the city, and the court said:

"This power to make police regulations is as much restrained by the section just referred to as is the legislative power vested in the senate and assembly. Both grants of power are alike made by the Constitution, and both are alike restricted by this section of the article. It may be further said of it, that it is prohibitory in its character, and needs no legislation to make it active in its effect. It is self-executing, and struck with nullity all acts in existence inconsistent with it as soon as the Constitution went into operation, and all since passed."

With reference to the question of the immorality of allowing women to drink in saloons or wine rooms, the court said:

"We will add here that the law-making power of the state is ample to make laws affecting both sexes alike, and not inhibited by the Constitution, which will accomplish the object so much desired—to prevent practices hurtful to public morality. The Constitution was not framed with a disregard of the important consideration urged upon us in this regard. It merely directs that a law which is framed to accomplish this object by affecting or operating upon

lawful callings, shall affect both sexes alike. We are not at liberty to say that such important matters were overlooked in framing our organic law.

"The ordinance and the law both being unconstitutional, there is no offense, and there can be no valid conviction and sentence; hence no jurisdiction for any purpose."

This decision is conclusive of the proposition that a woman has the same rights as a man. The whole policy of the law of this state has been to enlarge the rights of women and give them the same privileges and immunities which the male possesses.

There is no different rule, to be applied to ordinances concerning the liquor business, when the business is not prohibited by law, and other lines of business. An ordinance, therefore, which unjustly discriminates, as the ordinance in question does, as to the person to whom sales may be made, is invalid.

We have cited, and the defendants in error in the court below cited, the case of In re Mary McGuire, 57 Cal., 604. They have also cited the cases of

Ex parte Hayes, 33 Pac., 337.

Ex parte Christian, 88 Cal., 208.

Foster vs. Board of Police Commrs., 37 Pac., 763.

The point particularly decided in the McGuire case is that women had the right to be employed in saloons to serve drinks, the same as men. The later just mentioned take the contrary view. We desire to call the court's attention to the difference between the employment of a woman to serve drinks and the serving to a woman of drinks by a saloon keeper. The

late California cases refer only to the employment of women to serve drinks, and base their decisions upon the ground that in the exercise of police power a municipality may regulate the liquor traffic; and that includes the power to say who shall and who shall not deal out drinks in a saloon or wine room. The distinction to be drawn between the cases cited and the case at bar is that the question here presented is not a question of the regulation of the liquor traffic. It is an attempt on the part of the municipal authorities to discriminate as to the class of persons or individuals who may purchase liquor, and is an infringement upon the rights of that class and the individuals composing it, and not a regulation of the liquor traffic.

In other words, the question of whether a woman has the right to buy a drink, and as to whether the saloon keeper has a right to sell it to her, are questions which are covered by the Constitutions of the United States and the state of Colorado, guaranteeing to both the rights claimed for them; whereas, the question of who should and who should not serve drinks in a saloon does not involve a right which is guaranteed by the Constitution; and again, the discrimination, or attempted discrimination, against a woman to purchase a drink, and the saloon keeper selling it to her, does not involve the regulation of the liquor traffic. It is based upon the fact that she is a female and not a male, which is saying that under the guise of the police power they can discriminate against the female sex, in violation of the law of the land; and right here it is pertinent to inquire what is meant by

THE LAW OF THE LAND.

Webster puts it in a nutshell—

Dartmouth College vs. Woodward, 4 Wheaton, 519.

Works of Webster, Vol. 5, page 487.

"By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.

"Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land." And he continues: "If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgment, and acts directly transferring one man's estate to another, legislative judgments, decrees and forfeitures, in all possible forms" (and he might have added, unconstitutional ordinances depriving one of his property and liberty to wear, eat and drink) "would be the law of the land. Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void.

"It would tend directly to establish the union of all powers in the legislature. There would be no general, permanent law for courts to administer or men to live under. The administration of justice would be an empty form, an idle ceremony; judges would sit to execute legislative judgments and decrees; not to declare the law or administer the justice of the country."

Before Cronin could rightfully be deprived of his property by having his sales curtailed, there should

have been some competent complaint, presentment or indictment, declaring his place as conducted to be a nuisance; or declaring it, as conducted, to be subversive of morality, and a trial and judgment to that effect. Otherwise he is deprived of his property without due process of law—in defiance of the Constitutions, state and federal.

Again, Cooley, the eminent constitutional lawyer and author, says, at pages 431 and 432, in his work on constitutional limitations, this:

"The words, 'by the law of the land,' as used in the Constitution, do not mean a statute *passed for the purpose of working the wrong* (the italics are ours)—that construction would render the restriction absolutely nugatory, and turn this part of the Constitution into mere nonsence. * * * When the law of the land is spoken of, undoubtedly a pre-existing rule of conduct is intended; not an *ex-post-facto* rescript or decree made for the occasion. The design is to exclude arbitrary power from every branch of the government, and there would be no exclusion if such rescript or decrees were to take effect in the form of a statute."

Again, Justice Johnson, in Bank of Columbia vs. Okley, 4 Wheaton, pages 235 to 244, says:

"What is meant by the law of the land? * * * There can be no hesitancy in saying that the words mean the common law and the statute law existing in this state at the adoption of our Constitution. Altogether they constitute a body of law prescribing the course of justice, to which a free man is amenable for all time to come."

What is the police power? Chief Justice Shaw, in Commonwealth vs. Alger, gives the municipality al-

most unlimited power—not quite. He says in the above case, cited in Cooley's Constitutional Limitations, page 705, and approved by that author:

"We think it is a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. * * * The power we allude to is the police power. The power vested in the legislature by the Constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, *not repugnant to the Constitution* (the italics are ours), as they shall judge to be good for the commonwealth and the subjects of the same."

There can be no doubt that the police power is limited by the constitutional provisions. In the 14th amendment to the Constitution we find:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The decisions of the Supreme Court of the United States establish the principle that a state legislature or a municipal council may enact laws and ordinances regulating the conduct of citizens, provided such statutes or ordinances operate upon all citizens equally and are in regard to subjects within the police power of the state.

The question in this case is whether the police power of the state justifies the sections of the ordinances in question.

The plaintiff in error contends that the restrictions of these ordinances are invalid, because they do not operate equally upon all persons, and because they tend to deprive certain persons of the right to do business and acquire property.

The decision in the case of the Gulf, Colorado & Santa Fe Ry. vs. Ellis, 165 U. S., page 160, holds:

"That such classification can not be made arbitrarily. The state may not say that all white men shall be subjected to the payment of attorney's fees of parties successfully suing them, and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

The Supreme Court of Colorado, In re Morgan, 26 Colo., 415, holds that the constitutional provision is violated by a statute which unjustly and arbitrarily singles out a class of persons and imposes upon them restrictions from which others similarly situated are exempt, and that such a statute is also invalid as class legislation. It is held that the regulation of any business must be confined to its public side, and that protection of the health of individuals engaged in certain occupations does not justify a statute regulating the

number of hours persons engaged in such occupations may work. And the court says:

"Then it is only one step further to provide by law the style and quality of garments the citizen may wear, the quantity and quality of food he may eat, and the beverage he may drink."

See, also,

State vs. Loomis, 115 Mo., 307-314.
Vanzant vs. Waddell, 2 Yerger, 260-270.
Dibrell vs. Morris Heirs, 15 S. W., 87-95.
Bell's Gap R. R. vs. Pa., 134 U. S., 232.

Under the principles stated in the foregoing cases, the classification of the ordinance which allows a man to go into saloons and prohibits women from being present there is invalid.

The question of morality, which the supreme Court of Colorado claims justifies the ordinance, is not involved in this case, because it nowhere appears that the ordinance is based upon any such question; and neither that court nor this can assume that the question of morals had anything to do with the passage of the ordinance. The case was decided particularly upon the pleadings. No testimony was offered as to the effect of the presence of women in the saloons, and there is nothing in the record upon which to base a claim that evil effects follow from the mere presence of women in saloons, and if such evil effects do result they can be done away with by legislation which will act equally and uniformly upon all classes of persons.

There is much said in the briefs in the Supreme Court of the state of Colorado (which are printed in full in the transcript of record) that is not mentioned in this brief. We invite attention of the court to those arguments, and to the authorities cited.

We believe that we have shown clearly, both on principle and authority, that the sections of the ordinance in question are illegal and void; that the action of the fire and police board in arresting, and of the police and County Courts in fining Daniel Cronin, was an invasion of his civil rights, and were absolutely illegal and unwarranted, and therefore the judgment of the Supreme Court of Colorado should be reversed.

In conclusion, we wish to add one word in relation to

ETHICS, MORALS AND LAW.

At the outset of this argument we said that we should argue this question on principle; that we sought to have the ordinance in question declared void, not for the reason that it was oppressive, partial and unfair, alone; but because it was in violation of the provisions of the fundamental law of the land. We have, inexcusably perhaps, trespassed upon the time of the court more than was justifiable in the citation of authorities establishing elementary principles.

It is true, as was said by the court below, that no woman is here complaining of this ordinance; but it is also true that the only theory upon which it is sought to be upheld is that business of the plaintiff in error, as conducted, was prejudicial to the virtue and morals of women, and hence its suppression was in furtherance of the public welfare.

We are willing to admit that, were this a question of morals or ethics alone, it would be a good thing to prevent men, as well as women, from patronizing tippling houses and dramshops.

But this is a constitutional, and not an ethical or moral question.

When we consider the complicated apparatus providing against the change or amendment of our Constitution, requiring the consent of the legislatures of three-fourths of the several states and the deciding judgment of the Supreme Court in all matters of dispute, it may well give us pause in obeying the enactments of a legislative body confessedly going beyond their powers to the end that morality may be subserved, as they aver.

The "Glory of God" is no doubt greatly to be desired. The judges of the Salem witches desired it. Pilate desired it when he condemned Jesus of Nazareth. But who is to be the judge—and who is to point the way? We say the *fundamental* law, the HIGHER law, the CONSTITUTION.

A body of well-meaning men might convene and pass an ordinance to the effect that lynch law may be resorted to in extreme cases, for the greater safety of society, for the protection of the chastity and virtue of our women, for the upholding of morals, by the greater intimidation of criminals, notwithstanding the sixth commandment—Thou shalt not kill; or, that a man may, when the emergency arises, which to him seems justifiable, take of another's goods without his knowledge or consent, thus abrogating the law—Thou shalt not steal. But the great mandates given from Mt. Sinai would still be obligatory on mankind—the *higher* law prevails.

It is not the province of government or of law to deal with the finer and more vital issues which go to the upbuilding of the moral and religious world. The Constitution and all lesser laws made in accordance with it, deal but with the political structure of society. They have no more to do with individual personal freedom of action than they have with the matter of wardrobe, the regulation of our kitchens, the choice of a place of worship, or the morality of dancing or card playing. A merchant might as legally be enjoined from selling women corsets, in the interest of the healthy bodies of future generations, as a liquor dealer from selling her wine, which is not good for her.

The city council might as well, and with equal propriety, designate the streets along which she may walk, as the places she may be allowed to frequent. In fact, she is licensed to carry on business, under certain restrictions and for certain moneys, as much worse than wine bibbing as falling over a precipice is worse than peeping over the edge. In either case it is, and must be, a matter of her own choice and responsibility.

As we said, it is not our province to decide on the ethics of the case. But upon the law, *under* the Constitution. A man or a woman under the law may worship Jehovah or Juggernaut, according to his or her lights or leadings, without fear of adverse injunction.

Women are citizens, and in Colorado exercise the right of suffrage, and for any inferior legislative body to discriminate against her because of sex is to go counter to the principle which is the foundation stone of our national government.

That woman should be pure and chaste and hedged about by all the protections possible to insure her exemption from temptation is not to be accomplished by legal enactment.

In the early days of Massachusetts, one of the most important enactments passed at the first general court for elections in the spring of 1631, was the one by which it was declared that no man should be admitted to the body politic who was not a member of the church within its limits—

"The test of citizenship was piety and the test of piety was the Reformed Church."

But we have moved on since then. Out of the throes of the Revolution our Constitution was born. Alexander Hamilton and Thomas Jefferson were at the birth, and under the wise and nurturing care of Jay, of Marshall, of Taney and of Chase, and their distinguished and eminent coadjutors and successors, it has grown to a lusty manhood, and its benign provisions extend their blessings impartially over more than seventy millions of people, residing between the Atlantic and Pacific, and between the Lakes and the Gulf, and in the Isles of the Pacific; and it is not for any body of two by four, or 16 to 1, temporary legislators to control its provisions or to abridge the property or personal rights of any class of its citizens by their *dictum*.

We would fain bring it to pass that woman should live always "In the atmosphere of pure serenity and light and exaltation;" but she may not do this through ordinances and injunctions decreeing this and forbidding that.

The beauty of holiness, like the beauty of a sunset, is beyond the reach of the law. It is from higher sources than those dealing with the political structure of society—liberty or license are within the power of every woman—the liberty which sets free or the license which enchains—all this is aside from the domain of law. We are bound by the severest restrictions to the provisions of a Constitution which places bounds and limits beyond which the law can not interfere. To every man his idol, and to every woman her fetich, if they so desire, and no law can interfere. Our personal desires and tastes are our own, and no legal enactment can say us nay.

Equalization of privileges is within the scope of good government. Using or abusing them is the boon or bane of every free man and woman, and its responsibility is purely and *forever* personal.

If liquor selling is to be legalized, for God's sake let us not split hairs over it, nor add to the iniquity by assailing the integrity of the Constitution in ordinances striving to confine it to men. Woman is but "lesser man," and where he leads she will follow, whether it be upward to Paradise or downward to the nethermost Hell.

Rather cut at the root of the tree—nor hope to cure an evil by enactments striking at personal liberty, and adverse to the law and the Constitution.

Respectfully submitted,

MILTON SMITH,
Attorney for Plaintiff in Error.

10027

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 101.

DANIEL CRONIN, PLAINTIFF IN ERROR,

v.

THE CITY OF DENVER, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

Section 20 of the charter of the city of Denver defines the powers of the city council and, in part, reads as follows:

> "Except as otherwise provided in this act, the city council shall have the management and control of the city finances, and all property of the corporation, real, personal and mixed, and power by ordinance: * * * Exclusively to provide for the licensing, taxing and regulating of tippling houses, dram shops, billiard tables and bowling alleys; and the selling or giving away of any intoxicating or malt liquors by any person within the city, and to tax and regulate the same; provided, * * *.

"5th. That no liquor saloon, dram shop or tippling house shall have or keep in connection with or as part of such saloon, tippling house or dram shop, any wine room or other place, either with or without doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such tippling house or dram shop, and there be supplied with any kind of liquor whatsoever."

In pursuance of the authority by said section of the charter conferred, the council of the city of Denver enacted an ordinance known as ordinance No. 101 of the series of 1898, which may be found in the Compiled Ordinances of the city of Denver, from section 733 to section 763, inclusive. Section 745 thereof is as follows:

"Each and every liquor saloon, dram shop or tippling house keeper, licensed under the provisions of this article, who shall, by himself or his agent, clerk or servant, permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without door or doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon, dram shop or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided."

Section 746 is as follows:

"No person, whether as principal, clerk, agent or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith in any manner whatsoever, either by doors or otherwise, shall

suffer or permit any female person to be or remain in such liquor saloon, dram shop, tippling house, or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house or liquor saloon, or in any place adjacent thereto or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait or attend on any person, or solicit drinks in any such place."

For a violation of said laws the plaintiff in error was convicted in the city court of Denver. An appeal was taken to the county court, where a trial *de novo* was had, and this trial also resulted in a conviction. The proceeding was then carried to the supreme court of the state of Colorado, where, upon the authority of Adams et al. v. Cronin, 29 Colo., 484, the judgment of the county court was affirmed. (Cronin v. City of Denver, 29 Colo., 503.) The plaintiff in error now brings the action into this court by writ of error, and contends that the charter and ordinance are in conflict with the constitution and laws of the state of Colorado and the constitution of the United States.

ARGUMENT.

I.

THE LAWS IN QUESTION HAVE BEEN SUSTAINED BY THE SUPREME COURT OF THE STATE OF COLORADO, AND THIS EFFECTUALLY ANSWERS ANY ARGUMENT WHICH COUNSEL MAY MAKE, BASED UPON ANY ALLEGED INFRINGEMENT OF THE STATE LAWS OR STATE CONSTITUTION.

This doctrine requires neither argument nor citation of authority.

II.

THE CHARTER PROVISION AND THE ORDINANCE IN QUESTION ARE A VALID EXERCISE OF THE POLICE POWER OF THE STATE OF COLORADO AND ARE OBNOXIOUS TO NO FEDERAL LIMITATION.

This question we have discussed at some length in case No. 18624, entitled *Cronin v. Adams et al.*, now pending in this court. To repeat the argument there presented could serve no useful purpose. The two actions should have been consolidated, or, at least, ordered to be heard together. We shall content ourselves, therefore, by citing the authorities hereunder, to which reference was made in the Adams case. They are as follows:

Boston Beer Co. v. Mass., 97 U. S., 25.

Stone v. State of Miss., 101 U. S., 814.

New Orleans Gas Light Co. v. La. Light & Heat Producing & Mfg. Co., 115 U. S., 650.

Barbier v. Connelly, 113 U. S., 27.

Austin v. State of Tenn., 179 U. S., 343.

Holden v. Hardy, 169 U. S., 366.

L'Hote v. City of New Orleans, 177 U. S., 588.

L. & N. R. R. Co. v. Kentucky, 161 U. S., 677.

Camfield v. U. S., 167 U. S., 518.

Black on Intoxicating Liquors, sections 26, 37, 39 and 42.

Schwuchow v. City of Chicago, 68 Ill., 444.

Giozza v. Tiernan, 148 U. S., 655.

Bartemeyer v. Iowa, 18 Wallace, 129.

Thurlow v. Mass.; Fletcher v. Rhode Island; Pierce v. New Hampshire, known as The License Cases, 5 Howard, 504.

Mugler v. Kansas, 123 U. S., 623.

Crowley v. Christensen, 137 U. S., 86.

State v. Luddington, 33 Wis., 107.

Denver v. Domedian, 15 Colo. App., 36.

Foster v. Police Commissioners, 102 Cal., 491.

Ex parte Hays, 98 Cal., 556.

Bergman v. Cleveland, 39 Ohio St., 651.

Blair v. Kilpatrick, 40 Ind., 312.

State v. Reynolds, 14 Mont., 383.

State v. Considine, 16 Washington, 358.

In re Considine, 83 Fed., 157.

These cases show that the state, in its own discretion, may wipe the liquor traffic out entirely, within its boundaries, by prohibiting its sale to all, or that it may lessen the evil by designating those most likely to be injured by its use and prohibiting its sale to them.

III.

THE ALLEGED DISCRIMINATION AGAINST WOMEN, BY SAID LAWS, IS NOT A QUESTION THAT CAN BE RAISED BY THE PLAINTIFF.

If there is a discrimination of which the courts can take cognizance, this may be done only upon the complaint of a woman who has been affected thereby. It is a strange sort of incongruity for a saloon keeper, who is manifestly moved by greed and cupidity, to appear in a court of conscience under the guise of defending the rights of woman, when he shows that his real purpose is to do all in his power to debauch and debase her. Before a person can have any standing in court to test the validity of a statute on account of an alleged unlawful discrimination, he must show that he is the person against whom the discrimination is made.

Wagner v. The Town of Garrett, 118 Ind., 114.
Commonwealth v. Wright, 79 Kentucky, 22.
Marshall v. Donovan, 10 Bush., 681.
Smith v. McCarty, 56 Pa. St., 359.

The judgment of the supreme court of the state of Colorado should be affirmed.

Respectfully submitted,

HENRY A. LINDSLEY,
HALSTED L. RITTER,
CHARLES R. BROCK,
Attorneys for Defendant in Error.

No. 101.

Daniel Cronin, Plaintiff in Error, vs. The City of Denver. } In error to the Supreme Court of the State of Colorado.

[January 4, 1904.]

Mr. Justice McKenna delivered the opinion of the Court.

This action was brought in the police court of the city of Denver, State of Colorado, to collect $500, for the violation of section 746 of ordinance No. 101 of the city. Plaintiff in error was found guilty, and fined the sum of $50. On appeal to the County Court he was also found guilty and fined $100. The judgment was affirmed by the Supreme Court of the State, and thereupon the Chief Justice of the State allowed this writ of error.

The case involves the constitutionality of sections 745 and 746 of the ordinance of the city of Denver. That question was passed upon in *Cronin* v. *City of Denver*, just decided, and on its authority the judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.